New Perspectives on Aristotelianism and Its Critics

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Edited by

Miira Tuominen
Sara Heinämaa
Virpi Mäkinen

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The editors

About the Authors

John J. Drummond
is Distinguished Professor in the Humanities and Professor of Philosophy
at Fordham University. He specializes especially in Edmund Husserl's
phenomenology as well as the existential and phenomenological
hermeneutical traditions arising from it. He has a special interest in how
phenomenology relates to the philosophy of mind and ethics.

Sabine Föllinger
is Professor of Classics at the Philipps University of Marburg. Her specialities
include ancient philosophy, especially Aristotle's philosophy of biology,
Greek tragedy, and the study of myths, as well as gender studies and ancient
economic theory and literature.

Hallvard Fossheim
is Associate Professor of Ancient Philosophy at the University of Bergen. He
specializes in ancient philosophy, mainly on Plato and Aristotle, as well as
modern virtue ethics. In ancient philosophy, he focuses mainly on ethics,
moral psychology, and on the dialogical method.

Sara Heinämaa
is Professor of Philosophy at the University of Jyväskylä and the leader of
the research community Subjectivity, Historicity, Communality at the
University of Helsinki. Heinämaa is well-known for her work on embodiment,
intersubjectivity, and generativity. She has published widely in
phenomenology and history of philosophy.

Roberto Lambertini
is Professor of History at the University of Macerata, Italy. His main interest
areas are the history of political thought, medieval and intellectual history, as
well as the history of the Franciscan Order.

Virpi Mäkinen D. Theol.
(1999) is Senior Lecturer in Systematic Theology, currently acting as Professor
of Philosophy of Religion at the University of Helsinki. Mäkinen has
published monographs, edited volumes, and articles on medieval and early
modern politics and history of ideas.

Fred D. Miller, Jr.
is Professor of Philosophy at Bowling Green State University, USA. He specializes in Aristotelian philosophy, with additional interests in political philosophy, business ethics, metaphysics, and philosophy in science fiction.

Diana Quarantotto
is Professor at the Department of Philosophy at the University of Rome, La Sapienza. She specializes in ancient philosophy, especially the philosophy of science, on Aristotle and his philosophy of biology and its relation to his metaphysics, epistemology, and the theory of language.

Miira Tuominen, PhD
(2002) is University Lecturer in Philosophy at University of Jyväskylä, Finland, currently working as Academy Research Fellow. She has published monographs, edited works, and articles mainly on ancient philosophy, especially ancient philosophy of science and philosophical psychology.

Introduction: Aristotelian Challenges to Contemporary Philosophy—Nature, Knowledge, and the Good

The collection of articles presented in this book explores Aristotelianism and its critics from three distinct viewpoints in three historical periods: first, from the point of view of the philosophy of science and epistemology in Antiquity, secondly, from the perspective of the notion of individual rights in medieval philosophy; and, finally, against the background of 20th-century ethical discussions that offer alternatives to what can be taken as standard modern ethical theories (such as those developed by Sidgwick, for example). The main motivation of the selection is the general observation that, with respect to these specific themes, the influence and critical impact of Aristotelianism have not yet been sufficiently studied.

When it comes to assessing central questions of the philosophy of science and epistemology and their relation to Aristotelianism, we argue that there is a danger of making simplified generalisations and attacking Aristotle as a straw man representing tendencies that derive from inaccurate or modernising interpretations. The contributions in Part i focus on clearing up some such modernising misunderstandings pertaining to Aristotle's theory of science. Secondly, with respect to the history and development of modern ethics with its notion of individual rights, Part ii of the collection addresses the question whether, in the late Middle Ages, there was a radical change in the analysis of rights. The contributors offer contrasting views on this, arguing first that ancient authors lacked neither terms nor concepts for individual rights. Others oppose this suggestion by claiming that the profundity of late medieval conceptual change entails that any resembling notions that one might find in antiquity can only be superficially similar to the modern ones. Thirdly, the continuing ethical influence of Aristotelianism has been much discussed and disputed in the context of modern virtue ethics—a theme that forms the subject matter of Hallvard Fossheim's chapter. However, it is important to note that other modern ethical theories also bear a resemblance to Aristotle's approach in ways that have not been recognised in the extant literature. This is largely because contemporary phenomenology is typically not studied in connection with more strictly historical readings of Aristotle. However, as John Drummond and Sara Heinämaa show in Part iii of this volume, some central assumptions in Husserl's ethics resemble Aristotelian ethics and differ from modern ethics in its more standard form: particularly important is Husserl's

focus on the whole person as opposed to single actions and his assumption of a special form of rationality peculiar to ethics.

In philosophy of science and epistemology, modernising misinterpretations of Aristotle are most conspicuous in discussions concerning teleology or Aristotelian biology more generally but can also be found in some treatments of Aristotle's theory of knowledge. The main argument arising from the contributions of Part I is that the modern epistemological categories of empiricism *versus* rationalism on the one hand, and normative *versus* descriptive epistemology on the other, are not as such accurate means for categorising Aristotle's views. Rather, Aristotle offers an alternative perspective to central questions concerning knowledge precisely because his approach differs both from normative and descriptive theories. The same is true of empiricism and rationalism, and thus it is misleading to pin down the essentials of Aristotle's view by these dichotomies alone. Furthermore, with respect to teleology, Aristotle's form of teleology is, for example, often misunderstood as general purposefulness in nature. A more accurate reading relates it to models of explanation that prioritise function over constitution, and such a mode of explanation is by no means obsolete in modern biology. Finally, Sabine Föllinger argues that Aristotle's style of imparting and transmitting the results of his research is dialogical rather than dogmatic, and this raises the following questions: To what extent did Aristotle consider his findings in biology to be conclusive? And to what extent did he see them as parts of an ongoing research project?

The second cluster of contributions concerns the notion of subjective individual rights central to many variants of modern ethics. For those who want to argue that there is a continuous tradition of Aristotelianism in Western ethics, there are basically two main options: either to show that something sufficiently similar to such rights can be found in Aristotle, or else to find a form of modern ethics that gives the notion of subjective individual rights only a marginal or minimal role. Only by establishing either of these claims can one plausibly argue that possible differences pertaining to the notion of rights do not imply any radical difference in the way in which ethical questions are framed. Part II of this collection therefore studies the notion of subjective individual rights and discusses its possible 'anti-Aristotelian' nature. Fred Miller argues that ancient philosophers had conceptual and linguistic tools for formulating the notion of subjective individual rights, whereas Roberto Lambertini and Virpi Mäkinen in their respective chapters oppose this suggestion. They claim that Aristotle's use of the relevant terms implies an essentially different concept of right not capable of accommodating the assumption that all human beings possess a certain feature by virtue of which they have a special moral status. Lambertini and Mäkinen argue that it is only in the late medieval Franciscan

and anti-Franciscan debates on private property that a fully-fledged notion of individual rights is formed: on the one hand, only if one has an individual right to property can one denounce it as the Franciscans did. On the other hand, the Franciscan position of denouncing all property rights was argued to be problematic: if one does not own the food one eats, for example, eating becomes a form of stealing.

Part III takes up the task of analysing modern ethics from the viewpoint of both Aristotelian influences and attempts to break away from them. Hallvard Fossheim argues that, ironically, the proponents of virtue ethics today face the same kind of criticism that Anscombe launched in 1958 against modern ethical theories in her seminal article "Modern Moral Philosophy." John Drummond and Sara Heinämaa concentrate on a much less well-known connection between Aristotelianism and modern ethics as it has been developed in the continental tradition. They argue that, even decades before Aristotelianism was embraced as a major influence in analytical ethics, phenomenological philosophers, Franz Brentano and Edmund Husserl in particular, suggested ethical views that resemble central Aristotelian insights. The most significant similarity is found in the understanding of ethical rationality. According to Husserl, ethical reason is neither specialised in composing universal moral laws in the Kantian manner nor merely concerned with solving moral dilemmas in particular circumstances, but includes both generalising aspects with respect to the excellences of the will and acute judgment with respect to concrete and unique life situations. Further, ethical rationality is not inert with respect to action but compels us to care for ourselves as practical subjects who must act now but who also have the task of refining their person as a whole. This involves a complex whole of relations; it includes relations to other persons but also relations to the surrounding world and the realm of ideal forms. Ethical rationality does not just concern our actions vis-à-vis our fellow human beings but also raises questions concerning the best that is possible.

1   Science and Knowledge

1.1   *Scientific Method*
Early modern philosophers often positioned themselves as opponents of medieval Scholasticism operating within a conceptual framework that was, to some extent and in some sense, inherited from Aristotle and the long and complex tradition that brought his works to the Latin West. Further, and rather surprisingly, some contemporary scientists still want to distance themselves from what they consider to be Aristotelianism (Hawking and Mlodinow

2010: 23–24; 33).[1] Hawking and Mlodinow follow in the footsteps of Galileo's Simplicio in representing Aristotle as a proponent of *a priori* speculation instead of scientific observation and empirical research (*Dialogue Concerning the Two Chief World Systems*. Drake's 1953 translation, pp. 50–51). In contrast to Galileo, who lets Salviati speak for an empiricist reading of Aristotle, Hawking and Mlodinow seem to suppose that Aristotle in fact was a proponent of a method based on *a priori* reasoning instead of observation.

Hawking and Mlodinow's statement is important for this collection because it shows that even today there are highly acclaimed natural scientists who wish to underline the scientific nature of their project by contrasting it with Aristotelianism and Aristotle's philosophy. In addition to demonstrating the immense influence of a traditional opposition between Aristotelianism and modern science, the claim also shows that when history of science is not historically grounded and philosophically motivated, it produces simplified claims without much substance. However, Hawking and Mlodinow's statement implies that the debate about Aristotelianism and modernity is not limited to the fields of history of philosophy and history of science but can still figure in scientists' understanding of their methodologies and the essence of modern science. Ironically, the critics of Hawking and Mlodinow have argued that their own theory lacks empirical support, a fault the authors attribute to Aristotelians and Aristotelian Scholastics. Roger Penrose, for example, complains that "unlike quantum mechanics, the M-theory" that Hawking and Mlodinow propose in their book "enjoys no observational support whatever" (Penrose 2010).

In considering the role of observations in scientific theories, philosophers of science have long agreed that observations underdetermine theories (e.g. the Quine-Duhem thesis and Husserl's thesis about natural-scientific idealizations). In a similar vein, it has also been widely recognised that in the confines of today's natural science, observations are bound to be heavily theory laden. These arguments give no reason to question the importance of observations in science, but they have made it abundantly clear that mere observation without theory is scientifically powerless and that there is simply no

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way of securing theories by theory-free observations in terms of logically valid inference alone.

Irrespective of how one reacts to these problems of modern science and contemporary philosophy of science, we shall argue that no simple opposition between empiricism and rationalism captures the core of Aristotle's scientific method. While Aristotle is positive that human cognitive development begins from sense perception, he at the same time argues that generalisation from experience is possible for human beings because of their rationality. Similarly, even though he presents a large quantity of observations—particularly concerning the structure and life of animal species and functions of their organs—he by no means shies away from theoretical investigations on a high level of abstraction. There is no reason to doubt that he supposes such investigations apply to perceptible cases, and hence Aristotelian theoretical investigations should not be characterised as merely conceptual. However, the results of such investigations are not necessarily based on observation in any very straightforward sense. Consider, for example, Aristotle's general definition of movement in the *Physics* according to which a change is the actuality of what potentially is, as such (3.2, 201a10–11; see also 210a29, 201b5 and 202a7). Its relation to observations differs strikingly from scientific generalisations of observations such as 'boiling of water is the increased movement of molecules caused by the rising temperature'. In brief, even though Aristotle certainly differs from Plato as to whether or not scientific general results—or knowledge proper, *epistêmê*—are true of the perceptible world, he is not an empiricist in the sense of restricting theoretical work to inductive generalisations or to merely conceptual clarifications.

1.2   *Teleology*

Both in the common references to the Aristotelian philosophy of science today as well as in the early modern period, the main weakness of Aristotelianism is its teleology. Recent scholarship has exposed and corrected some common misunderstandings of this mode of explanation—or responding to 'Why?' questions, as Aristotle's parlance has it—by reference to 'that for the sake of which' (*to hou heneka, heneka tini*), the kind of explanation that in medieval Aristotelianism was translated as explanation by 'the final cause' (*causa finalis*) (see, for example, Johnson 2005; Quarantotto 2005; Leunissen 2010). The general thrust of these scholarly discussions is that many reactions against Aristotelian teleology are based on misinterpretations. Most importantly, Aristotelian teleology does not require conscious planning by a cosmic designer or awareness of purpose in biological organisms. Rather, as mentioned, it can

be likened to the way in which the body parts and organs of biological organisms can be explained by reference to their function

Aristotelian teleological explanations—or explanations in terms of for-the-sake-of-which—are introduced as pertaining to an eternal universe in which the animal species are unchangeable. Hence, naturally, Aristotelian explanations are often contrasted with Darwinian evolutionary explanations. While Aristotle's explanatory repertoire did not include the notion of evolving animal species, there is a structural similarity between Aristotle's and Darwin's mode of explanation—Allan Gotthelf speaks of "an isomorphism" between Darwin's biological vision and Aristotle's (1999: 21; see also Johnson 2005: 4). This claim of similarity cannot be overridden by the simple observation that evolution is not a goal-directed process in the sense of aiming at the production of more perfect species. Aristotelian internal teleology, that is the explanation of the features of the species by reference to the function of the organs, does not require such a cosmic aim.

Darwinian explanations refer to survival, and those features that promote the survival of the species are supposed to be preserved in the process.[2] Even though evolution is not a teleological process in the vulgar sense that it would have an express aim (for example the production of better-adapted animal species), it still explains the preservation of certain features in terms of what they are there for. Consequently, the theory claims that there is something those features are there for, namely their functions and, ultimately, the life and survival of the organism (see also Gotthelf 1993: 23). As such, it can be contrasted to an explanation of, for example, the above-mentioned boiling of water which solely refers to the increased movement of molecules caused by the rising temperature.

It is remarkable that Darwin himself did not oppose teleology. Quite the contrary. In a letter to Asa Grey (1874) he noted with pleasure that Grey had seen a connection between Darwin's explanations and teleology—a connection that many had missed (see Lennox 1993: 409). Further, two months before his death, when Darwin had the first chance to read larger stretches of Aristotle's text in English translation (*On the Parts of Animals*), he also communicated his great appreciation of Aristotle's biological work to the translator, William Ogle.[3] It has been argued that the brief but carefully formulated letter Darwin wrote shows that Aristotle's *On the Parts of Animals* impressed him

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2   Darwin also occasionally uses the expression "Final Cause" (for evidence, see Lennox 1993: 411).

3   The famous line runs as follows: "Linnaeus and Cuvier have been my two gods, though in very different ways, but they were mere school-boys to old Aristotle."

on account of its classification principles and the explanation of animal structure by reference to function.[4]

Returning to Aristotle, some scholars have claimed that explanation for-the-sake-of-which proper to single organisms, so-called 'internal teleology', is not a sufficient description of Aristotelian teleology. Rather, a god-centred, life-centred, or anthropocentric cosmic or global teleology is also required and it is prior to the internal one. Thus the internal teleology of biological organisms cannot be understood without the cosmic perspective (see especially Sedley 1991; 2000; 2007: 167–204; cf., e.g., Code 1997 and Matthen 2001). The debate concerning teleology is a large topic and involves several issues. The first chapter of this collection makes a specific contribution to this debate, one that can be used as an initial step to solving more general problems. Diana Quarantotto argues that the cosmic perspective can be used to illuminate the ways in which Aristotle conceived of the internal teleological relation. Further, she suggests that the cosmic perspective enables us to see the importance and inner value that Aristotle ascribed to eternal being and that this value is also reflected in the functional for-the-sake-of-which explanations of particular organisms. On the basis of Quarantotto's reflections, a further question can also be raised: Despite the fact that Darwin supposes biological species to change, can the survival of a species in the theory of evolution be seen as analogous to the *telos* of the Aristotelian cosmic teleology, namely eternal life? In Aristotle, such life is proper to natural species and the individuals contribute to it (not necessarily in a conscious manner) in cyclical reproduction.

1.3   *Axiomatic-Deductive Science?*

According to Aristotle, science or knowledge in the proper sense (*epistêmê haplôs*) is a complex of what he calls demonstrations or proofs (*apodeixeis*) with unprovable premises. It is also well known that Aristotle was influenced by and borrowed some of his terminology from early Greek mathematics. On this basis, many readers of the *Posterior Analytics* have concluded that here Aristotle presents an axiomatic-deductive model for science. With this backdrop in mind, the question then is: If he grasped science in this way, why are his actual scientific treatises not organised according to an axiomatic-deductive model? Recent research has shown, however, that this common conception is misleading (see, e.g., Cleary 1995; Lennox 2001; Tuominen 2007). Whereas Aristotle states that the premises of proofs cannot

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4   See Gotthelf 1999. Some have claimed that the letter is merely a formal expression of gratitude. However, the crux of Gotthelf's argument is that this cannot have been the case, since Darwin had already written such a note a month earlier.

be proved, there are important dissimilarities between his syllogistic conception of science and his framework of species and genera on the one hand and the axiomatic-deductive model on the other. Thus his idea of unprovable premises should not, without qualification, be assimilated to the idea of an axiom of an axiomatic-deductive structure.

Even though Aristotle maintains that the premises of proofs cannot themselves be proved, his description of them differs from the kind of axiomatic principles that we would classify as being self-evident. Aristotle famously distinguishes between "what is better known to us" and "what is better known in nature," and explains the former by saying that it is "near perception"—directly observable or requiring only simple generalisation—and thus easy to learn, whereas the latter is farther from experience and explanatory of the perceived phenomena. A scientist needs to have considerable experience of structured research in order to arrive at the explanatory principles that function as the premises of real proofs. For such scientists who have conducted the research and have wide empirical and theoretical mastery of the field the real premises have become second nature. The premises are well known to them, and those scientists have the disposition to prove and explain things within a certain science (see also Aristotle's description of *epistêmê* as the soul's disposition to prove, *hexis apodeiktikê, Nicomachean Ethics* 6.3, 1139b31–32). However, such a state requires great effort, and if the knowledgeable person knows the premises without proof, this kind of 'self-evidence' is different from the self-evidence of *a priori* axioms of an axiomatic deductive system.

Another important difference between Aristotle's general conception of science and the axiomatic-deductive model is that, whereas the axiomatic-deductive model requires a small number of self-evident principles, according to Aristotle there are almost as many unprovable premises of proofs as there are conclusions (*An. Post.* 1.32, 88b3–4). As the distinction between what is better known to us and what is better known in nature implies, research starts from things or facts that are easy for us to learn, namely observations and simple generalisations. However, as mentioned, observations and simple generalisations are not the premises of proofs; they are starting points for enquiry but in scientific proofs they appear as conclusions. The crucial difference in this respect is that, from Aristotle's perspective, scientific enquiry proceeds in a direction opposite to axiomatic-deductive proofs: one starts from the observed phenomena and seeks an explanation for them in terms of the general principles within each science, and it is those principles that are the unprovable premises of proofs. Aristotle is confident both that such principles exist and that they are knowable by human beings. Thus he claims that every

chain of explanation has an ultimate starting point and proofs do not continue *ad infinitum*.

These observations help alleviate the tension between Aristotle's theory of a finished and complete science and the concrete way in which he proceeds in his own scientific treatises. Since Aristotle's scientific works can best be described as reports of enquiry involving arguments for the kind of view he is at the same time working to uncover, the expectations that these very arguments would be the proofs themselves should be abandoned. However, it is not entirely clear how exactly this general observation should be articulated. According to Owen's classical suggestion (1961), Aristotle does not separate two distinct methods of enquiry, namely a scientific one starting from observation and a dialectical one starting from reputable conceptions (*endoxa*). Rather, Owen argued, the reputable conceptions should be assimilated or likened to the observations and phenomena that need to be laid down and from which enquiry proceeds, e.g., whether *akrasia* (weakness of character) exists or not. Recent research has objected to this assimilation by contrasting empirical and dialectical methods and argued that merely the former should be characterised as scientific (Bolton 2009; Pellegrin 2009). According to this interpretation, Aristotle proceeds from reputable opinions only in cases in which no observations are available.

The present collection approaches this well-known debate from a new angle. Sabine Föllinger argues that Aristotle's biological works also contain traces of a dialogical rather than a dogmatic style. In addition to the explicit conclusion drawn in that chapter, namely that Aristotle considered dialogue to be the proper way of transmitting knowledge, Föllinger's argument raises the further question to what extent those biological works in fact contain what Aristotle would have regarded as complete, achieved biological science. The material discussed in the chapter shows that even the biological works contain arguments with an explorative dimension "whether this is the case or that" and arguments against the rejected positions. Aristotle's biological works are thus not mere lists of observations and their classifications according to the principles that Aristotle has established. This might also imply that one should not overemphasise the distinction between empirical science and dialectical arguments in Aristotle's case—let alone expect in Aristotle's own biological works an axiomatic-deductive chain of proofs from self-evident principles.

What is more, not even complete explanatory proofs in an Aristotelian sense or syllogisms expressing the genus-species structure should be demanded in the works that proceed in the manner of posing questions and presenting arguments rather than providing complete, articulated proofs. However, it is

important to specify that this claim does not entail that Aristotle failed to base his practice of science on his theory of it. Quite the contrary. His biological works seem to offer guidelines as to how to understand his theory of science and how he thinks one should organise the material that is found in research.

1.4   *Epistemology*

As Aristotle's approach does not fit into an easy classification in terms of empiricism and rationalism, his general views on knowledge are not reducible to the categories of modern epistemology either. Further and even more generally, it is debatable whether or to what extent the modern analysis of knowledge in terms of justified belief is applicable to Aristotle's position. Miira Tuominen takes up the issue of Aristotle's views on knowledge and situates them in a wider epistemological framework. Her main argument is that Aristotle's approach offers a challenging and insightful alternative to the debate between normative and descriptive epistemology in the 20th century.

As can be expected on the basis of the general tendency to assimilate Aristotle's conception of science to an axiomatic-deductive ideal, there has also been a strong tendency to characterise him as an epistemological foundationalist. Given that Aristotle argues that *epistêmê* requires proofs and unprovable premises, this seems to imply that the foundations of knowledge need to be directly knowable through a kind of insight that justifies the knowledge claims derived from them. However, Tuominen argues that Aristotle's conception is much more complex than that. The mismatch between epistemological foundationalism and Aristotle's terse and somewhat cryptic account of how we come to know principles has been observed in the scholarly literature for quite some time. Myles Burnyeat, for example, has described Aristotle's account as "perfunctory in the extreme" (1981: 133). Against this view, Tuominen claims that Aristotle's account is frustrating only if one attempts to force it onto the Procrustean bed of modern epistemology. Some of the qualms caused by such a procedure can be alleviated when one observes that Aristotle's approach differs from modern epistemology in crucial respects: it contains both normative and descriptive elements combined in a rather different way.

The crux of Tuominen's argument is the observation that the normative requirements for the starting points for proofs are very different from a Cartesian quest for certainty and they also differ from the quest for epistemological justification in the framework of contemporary epistemology. While Aristotle's position possibly bears some resemblance to modern externalism, the ultimate questions he poses with respect to knowledge are importantly different from the modern ones. Further, as has also been argued by Gerson

(2009), knowledge (*epistêmê*) as Aristotle discusses it in the *Posterior Analytics* should not be analysed as justified belief. Rather than being a certain kind of belief, knowledge is contrasted with belief.

All in all, the first part of this volume shows that Aristotelianism is not an antiquated collection of doctrines one should oppose. Rather, historically sensitive readings of Aristotle, which at the same time pay close attention to contemporary developments, have much to offer to debates that are fully alive in our times.

2   The Emergence of Rights

2.1   *Modern Politics of Rights as Opposed to Aristotle's Polis*

The idea that all human beings *as individuals* are equal and that just because they are human individuals they deserve certain kinds of treatment and are entitled to the right to live, is often perceived as a typically modern ethical-political idea. In addition, its modernity can be seen to lie in its being opposed to some core ideas of Aristotle's political theory. As is well known, some ancient philosophical schools, most notably the Stoics, argued that all human beings are equal because all of them are rational in the sense of having the capacity for propositional thought and for developing linguistic capacities on the basis of it. Aristotle, by contrast, only ascribed citizenship to free men and thus limited full political rights to them.

Consequently, Aristotle's ethics and politics have been seen as seriously lacking from the viewpoint of modern ethical and political discussions. In these discussions, however, it has not been emphasised that Aristotle occasionally points to the idea that certain restrictions on what slaves can or cannot do only apply to them as representatives of those political roles, whereas as human beings they are, in a limited sense at least, equal to their masters. For example, as human beings a slave and his master can be friends, but as a slave and as a master they cannot (*Nicomachean Ethics* 8.11, 1161b5–8). However, despite some form of justice that applies to human beings more generally and some minimal equality between them, Aristotle's political theory is guided by the idea that different individuals have different social roles and that these roles restrict what those individuals can do. Surely, citizens have full powers as members of the political community, but political equality for all human beings is not promoted.

Further, even though Aristotle in a sense conceives of justice as natural (he speaks of "what is naturally just", *to phusikon dikaion*), his notion of justice is

not egalitarian in the sense that it would ascribe the same treatment or same profit to all. Rather, his discussion of justice is based on merit: justice in its distributive form is understood as the distribution of goods in accordance with what each of the recipients of those goods deserves. This idea is opposed to the requirement that each individual is entitled to some basic rights simply on the grounds of being a human individual.

2.2   *The Debate about the Origin of Individual Rights*

The second part of the volume investigates the emergence and evolution of individual rights[5] and the impact of Aristotelian ethical and political theories on them. This is a highly contested question in current research on political thought. Scholars agree that the ways in which individual rights are discussed today are an outcome of a long legacy of theorising. However, it is disputed when, how and why the notion of individual rights was introduced and whether its emergence can be understood as a continuation or a revival of an earlier tradition, or whether the Enlightenment declarations of rights involve an entirely new understanding of the notion. Some scholars even reject the whole idea of human rights as "belief in witches and in unicorns" (e.g. MacIntyre 1981: 67) but it is more common to agree on the importance of the notion while disputing its origin. More specifically, some suggest that rights are of ancient origin and Fred Miller argues for this view. Some scholars maintain that such rights originated in the Middle Ages (see, e.g., Tierney 1997; Mäkinen 2001), whereas others claim that the notion of rights is a typically modern one. Of these scholars, some date the emergence of the notion to the early modern period (e.g., Hunt 2007) but it has also been argued that the notion only emerged after the Second World War (e.g., Moyn 2010). In Part II of this collection, Roberto Lambertini and Virpi Mäkinen discuss the details of the late medieval development and problematise Miller's suggestion.

The disagreements among scholars are of a fundamental nature. One important question is what one is looking for when trying to identify the origin of the notion of individual rights. It is not clear whether we should try to find

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5   'Human rights' is a characteristically modern concept that first appeared in eighteenth-century political texts. Before that the most common notion that referred to the idea that all human beings are to be treated in a certain way just because they are human was 'natural rights' (*ius naturale*). The notion of natural rights also implies a commitment to theological and philosophical systems; this is not necessarily the case with human rights. Chapter 4 operates with the notion of human rights, but in general we prefer the terms 'natural rights' and 'individual rights', which were used by the medieval and early modern scholars themselves.

the origins of an idea, a theory, or the specific terminology of rights. Another disputed problem concerns the justification of individual rights. Whereas the earliest theorists of natural rights from the Middle Ages up to the early modern age asserted natural rights as inherent in human beings, more sceptically oriented thinkers denied any universal human nature, or any 'essence' of humanity, and these arguments were presented to undermine the whole notion of rights that belong to all human beings. For Jeremy Bentham, for instance, any talk of natural rights was "nonsense upon stilts". A third disagreement concerns the relationship between the individual and the community and the possible implications this relation may have for the debate about rights. The earliest theories of rights are often seen as individualistic reactions against a medieval communal ethics and similar questions are also found in the current debate between libertarians and communitarians. However, perhaps the most extensive modern objection to the claim that there are human rights springs from cultural relativism or historicism (e.g., Bielefeldt 2000). Even though these objections are formulated in strikingly modern terms, the debate about whether all human beings should be treated equally is of course of ancient origin.

When it comes to terminology, the early vocabulary includes the Latin *ius* and the Greek *dikaion*. Especially *ius* is an elusive term. In ancient, medieval and early modern sources, there are numerous interpretations of what *ius* means and what it refers to. Partly the variation is due to context: the interpretation of *ius* depends on whether we consider it to be a legal or a moral term, but variation is also found within one context. In Roman legal tradition, for instance, *ius* could mean a thing (*res*), rightness or justice as existing in external nature, and in this sense it needs to be understood to refer to right as something objective. On the other hand, *ius* also referred to a body of legal or moral precepts, e.g., *ius civile* and *ius gentium*, and was thus understood as equivalent to *lex*, 'law' or 'the laws'. (For a discussion of the terminological variation, see Thomas 1976.) In ancient philosophical usage, *dikaion* and *ius* primarily referred to right as something objective within a characteristically moral as opposed to a legal context. However, Fred Miller's contention is that the Greeks had a legal concept corresponding to the modern notion of subjective right and the terminological means to articulate the content of the notion. He also points out that authors who are typically perceived as representatives of a discourse based on individual rights, such as John Locke, do not extend individual rights equally to all of humanity.

As mentioned, Roberto Lambertini and Virpi Mäkinen challenge this claim and argue that the emergence of the notion of natural subjective rights

properly understood requires late medieval developments in voluntarist psychology and other related developments in legal and social discussions. More specifically, whereas Miller argues that the Greeks had a concept of subjective right, Lambertini and Mäkinen state that the ancient expressions *ius naturale* and *phusikon dikaion* are not subjective in the sense of pertaining to each individual on account of merely being a human individual; rather, they are objective in the sense of being based on the nature of justice.

With respect to terminology, Miller refers to Demosthenes and argues that there were several terms and locutions in ancient Greek that could be used to refer to the idea that an individual (a litigant) has a rightful claim to another individual. Similarly, there were ample options to express the idea that an individual has a specific liberty as an individual. Since these two ideas are vital in the modern notion of subjective right, at least the terminology was no hindrance to the formulation of ideas that have typically been considered modern. With respect to Vlastos's suggestion (1977) that Plato operated with the notion of individual rights, Miller argues that even though there are some intimations of what we understand as individual rights, Plato in the end subordinates the individual to the city and thus the ultimate foundation of the alleged rights of individuals is derived from their roles in the whole and so these rights do not belong to them as individuals. However, with respect to Aristotle Miller claims, first, that the good of the city should be understood as mutual advantage, namely as requiring that each of the citizens is happy and thus the Platonic subordination would not hold. Further, even though Aristotle leaves slaves and women outside of full citizenship, Miller maintains that there is continuity between Aristotle's discussions and ours, not an entire rupture of viewpoints, even though citizens' rights of course do not extend to the whole of humanity. Finally, on this point, according to Miller the same arguments that could be launched against Aristotle could also be directed at Locke, who assigned rights to individuals as God's creatures and on the basis of labour that was understood as a merit, not on the basis of subjective freedom. What is more, Locke did not argue against slavery and the subordination of women, and thus the scope of individual rights remained limited.

Roberto Lambertini and Virpi Mäkinen focus on the medieval discussions of rights. The two essays argue that, in medieval times, authors started to operate in the language of subjective individual rights along with right objectively understood. The subjective and the objective interpretations together and the objective perspective as employed by the Spanish scholastics in the 16th century also gave rise to new ways of articulating subjective rights. Lambertini and Mäkinen contend that the ancient concept of objective right was reshaped

into the modern language of subjectively understood rights when new conceptions of human beings as persons were introduced. In this framework, a person was conceived as an autonomous individual and as a member of a civic state that, on the basis of a social contract, protects the rights of that individual.

Concerning medieval discourse, it has been argued that the Aristotelian tradition provided a basis for the classical doctrine of objectively understood natural right that scholastic authors inherited and exemplified in their doctrine of the natural law (see Tierney 1997; Brett 1997). Thomas Aquinas, for instance, is seen to represent this tradition. For him, *ius* was primarily a thing (*res*), something existing in external reality, as justice (*to dikaion*) also was for Aristotle and *ius* for Ulpian. Aquinas followed the ancient legal and philosophical traditions, and for him the most common definition of *ius* was that it is an objective entity. However, Aquinas did not only use *ius* in this sense but gave some derivative meanings to it and distinguished between different kinds of *ius*. Some of these uses of the notion in fact seem to exemplify a subjective sense of rights, as is the case with the phrases *ius dominii* and *ius possidendi*, the rights of a ruler and the rights of a possessor.

However, recent studies have contested the view that Aquinas both endorsed the traditional notion of objective right as a derivative of justice as an existing thing and distinguished several subjective senses of 'right' (*ius*). It has been shown that the distinction between objective and subjective right was not clear among medieval and early modern thinkers (see, e.g., Brett 1997).[6] To begin with, the whole vocabulary concerning *ius* and other similar terms, such as *dominium* and *possessio*, related to ownership, varied from one author to another and the terms were interpreted differently in different sources (Mäkinen 2001). What is more, even the same author could have different meanings for one term. For example, the term *dominium* could refer to private property rights, possession in general, or authority in a political sense, and Conrad Summenhart gave almost twenty different explanations of it.

Both Lambertini and Mäkinen argue that the most important context in which a fully developed language of subjectively understood rights emerged was the debate about Franciscan poverty from the 1250s up to the 1340s. In the medieval context, predecessors for these discussions can be found, for example, in the discussion concerning the rights of the poor among canon lawyers. The Franciscans and their opponents referred to that discussion as well and

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6 See also Tierney (1997: 23) for the view that Aquinas did not fully develop a notion of natural individual rights.

used partly the same terminology in their own treatises, but developed a more clearly articulated terminology of rights. Further, Lambertini and Mäkinen suggest that subjectively understood rights require the supposition of a power inhering in an individual and thus late medieval voluntarist psychology seems to be a necessary theoretical basis for subjective rights. As opposed to the Aristotelian notion of distributive justice based on merit, the power of the will is assumed to be inherent in all individuals as God's images, and this assumption entails an idea of the fundamental equality of human beings. Mäkinen also pays attention to the diversity of terminology and sheds light on the impact of ancient legal and philosophical notions, especially those of Aristotle and Aristotelianism, on the medieval rights discourse. It also shows how medieval authors often used and interpreted Aristotle in a tendentious manner and did not consider Aristotle's discussions from their internal perspective.

As a whole, the second part of the collection exemplifies the variety of the debate that concerns the early stages of the emergence of the notion of rights as the basis of moral, legal and political discussion. The common aim is to argue that much of what is considered characteristically modern is in fact found in earlier discussions. However, the essays interpret the development of the notion of subjective rights differently. Whereas Miller challenges the assumption of a discontinuity between Aristotle and modernity, Lambertini and Mäkinen qualify this claim by arguing that ancient legal and philosophical ideas paved the way for and gave important material to modern interpretations of individual rights without containing full developments of such rights. According to the interpretation promoted by Lambertini and Mäkinen, there is no direct continuity between the ancient and medieval theories even though partial terminological and conceptual parallels can be found.

3   Ethics and the Good Life

3.1   *Practical Rationality as a Unique Kind of Rationality*
In distinction from mainstream epistemology, philosophy of science, and political philosophy, which typically consider Aristotelianism as obsolete or otherwise objectionable, present-day ethics and moral philosophy include several neo-Aristotelian approaches as well as many virtue-ethical theories based on creative readings of Aristotle's works. Thus, in distinction from the other subfields of philosophy, ethics and moral philosophy are today often reconsidered and reformed by innovative applications of Aristotelian concepts.

One important connecting element in many versions of contemporary neo-Aristotelianism and present-day virtue ethics is the idea that there is a third

form of rationality or a practice of reason, distinct from the rationality of the natural sciences and that of juridical argumentation or rule-following. Such rationality concerns us, not as subjects of judgment, scientific or judicial, but more fundamentally as subjects of action.

The idea of the specificity of practical reason has roots in Aristotle's *Nicomachean Ethics*. To be sure, his teleological approach covered the realm of natural being as well as the realm of human affairs but, despite this unity, Aristotle articulated an important difference between natural scientific classifications of different species and ethical distinctions between types of virtues and virtuous characters. Whereas we can capture the form or *telos* of a natural thing by studying its movements or changes in relation to other things without participating in these relations, the *telos* of a human being necessarily includes a self-reflective dimension that concerns our own actions and our relations to other human beings. In other words, our ethical classifications of virtues are different in their sense, form, and purpose from our natural scientific classifications, despite their rather similar linguistic form. We do not distinguish between excellences and virtuous lives in the mere interest of knowing about them but more fundamentally in the interest of acting better, becoming better agents, and, perhaps, teaching others to become better agents.

The relevant passage from Aristotle's *Nicomachean Ethics* is well known but worth quoting at length, because its basic insight is shared by all contemporary neo-Aristotelian approaches, despite their different ways of interpreting and formulating the goals of ethical reflection:

> Since, then, the present undertaking is not for the sake of theory, as our other undertakings are (for we are not inquiring into what excellence is for the sake of knowing it, but for the sake of becoming good, since otherwise there would be no benefit in it at all), we need to inquire into the subjects relating to actions, i.e. to how one should act; for as we have said, our actions are also responsible for our coming to have dispositions of a certain sort. (. . .) [E]*verything one says about practical undertakings has to be said, not with precision, but in rough outline* (. . .): things in the sphere of action and things that bring advantage have nothing stable about them, any more than things which bring health. *But if what one says universally is like this, what one says about particulars is even more lacking in precision; for it does not fall under any expertise or under any set of rules—the agent themselves have to consider the circumstances relating to the occasion*, just as happens in medicine, too, and in navigation (EN 2.2, 1103b26–1104a11, Rowe's translation slightly modified, italics added).

The point here is not that ethical rules lack general applicability or universal validity, or that we can only study individual cases in moral philosophy. Rather the idea is that the concepts by which ethical generalities are expressed lack the type of instantiation characteristic of natural scientific concepts on the one hand and judicial concepts on the other (cf. von Wright 1963 I §6: 12–13). This is because action and character can be virtuous only in the context of a human life, and a human life is an open dynamic whole susceptible to self-improvement and self-fulfilment. In other words, the type of whole to which human actions belong and in which they can prove to be virtuous is very different from the types of wholes to which natural particulars and juridical particulars belong. For this reason, ethical concepts necessarily differ from both natural scientific concepts and judicial concepts, and, similarly, ethical generalisations differ from natural scientific laws and juridical laws.

It needs to be added that even though Aristotle in the quoted passage distinguishes between knowledge *for the sake of knowing* and knowledge *for the sake of becoming* good, knowledge for him is never detached from the human good. As is well known, he argues in *Nicomachean Ethics* Book 10 that the highest good of the human being lies in the exercise of theoretical virtue, and thus no genuine knowledge is irrelevant from the perspective of human virtue and happiness. This, however, does not imply that our knowledge about our highest happiness—i.e. the task of exercising theoretical knowledge—would be merely theoretical in its nature. On the contrary, the understanding of the content of happiness can only be captured by practical reflections and learning—a claim that might seem surprising given the rather abstract nature of Aristotle's ethical discussion.

Thus theoretical knowledge (*epistêmê*) for the sake of knowing is a necessary constituent of the highest virtue and happiness but, paradoxically, it cannot teach us exhaustively about virtues and forms of happiness. This is because the highest kind of theoretical knowledge is not about human affairs. As Aristotle emphasises in Book 6 of the *Nicomachean Ethics* (6.7, 1141a20–22), such connection would imply that the human being is the highest creature of the universe but that, he claims, is clearly not the case. Even though Aristotle is not as explicit as one would hope in specifying the content of wisdom (*sophia*), i.e., the highest kind of theoretical knowledge we can have, he is quite clear that the objects of wisdom need to be the highest things in the universe, and these things are not human beings. Rather, wisdom concerns the order of the heavens and its principles (1141a34–b2), and human virtues and forms of human happiness are to be distinguished by the concepts of practical knowledge (*phronêsis*).

The transformative power of Aristotelian practical knowledge lies both in its content and in its compellingness with respect to action. Insofar as we have genuine practical knowledge about virtuous action on the one hand and about vicious or defective action on the other, this does not remain neutral to our lives but has implications for how we ourselves act. Further, from an external perspective, the realisation of practical knowledge can never be determined by reflecting on single actions but requires an understanding of the person's character and her motives. For example, to determine whether a person is just or not, it is not sufficient to identify the just acts she performs. In addition to performing such acts, the person also needs (i) to act knowingly (i.e., knowing that the action in fact is just), (iia) to choose the actions and (iib) to choose them for their own sake, and (iii) to act from a stable and immutable disposition of character (EN 2.4, 1105a31–33).

3.2   *Virtues and Weaknesses*

Aristotle's ethics is not just a discourse on virtues, but also includes elaborate and comprehensive accounts of various kinds of vices, and Aristotle describes these with acuity throughout his ethical works. Moreover, he argues that people are mostly plagued by weakness, not by viciousness. Even though his discussion of weak character types sometimes has an air of theoretical observation, the descriptions of weaknesses are put forward not only as external classifications but also in the interest of self-reflection and self-improvement. For example, a striking passage from the *Nicomachean Ethics* describes a particular weakness in very concrete terms but with far-reaching implications:

> The type that is deficient in relation to what most people resist, and successfully so, is the one who is soft and weak for comfort, since weakness for comfort is a kind of softness—as with the person who lets his cloak trail on the ground so as not to be troubled by the pain of lifting it, and who, while imitating a sick person, does not consider himself unhappy even though he is like an unhappy person. (EN 7.7, 1150b1–5, Rowe's translation modified)

From the perspective of the previous discussion of the nature of practical knowledge, we can see that this description is not merely a curious depiction of the habit of pretending to be ill. Rather, descriptions such as this always have self-reflective implications. Imagining the man that drags his cloak along pretending to be in poor health is important for the task of recognising a similar or analogous tendency in oneself: a tendency to seek excuses for not following

what one understands to be good by appealing to not being in a good condition and thus implying that one should not be subjected to moral scrutiny or to the requirements of virtuous action. In general, Aristotelian ethics not only involves subtle distinctions and observations on what being good means but also many explanations and examples of various forms of defectiveness, and together these accounts guide us when considering how to act (cf. Anscombe [1958] 1997; Hursthouse 1990–1991).

The realisation of the unique quality of the Aristotelian concept of practical knowledge shows that the common complaint that neo-Aristotelian approaches are inadequate because they do not, or cannot, provide algorithm-type or law-type rules for the judgment of human actions is simply misplaced. Aristotelian practical rationality is distinct from both these types of reasoning and yet not identical with sheer moral particularism. Moral deliberation differs from scientific thinking in being a task that each person has to perform for him or herself. It cannot be allocated to other people, experts, specialist, or authorities of any kind. Moral deliberation also differs from judicial thinking for the simple reason that it is not *post hoc* but necessarily precedes action. We can of course learn from our earlier mistakes and from the mistakes of others, real or imaginary, but we do not enter into moral deliberations in the mere interest of judging about human action or about the actions of our fellow human beings but in the interest of acting in particular situations ourselves.

3.3   *Post-Kantian Developments*

The origin of contemporary Aristotelian ethics is usually tracked down to Elisabeth Anscombe's influential essay, "Modern Moral Philosophy" (1958) which questioned the then prevailing deontic and consequentialist paradigms. In this article, Anscombe argued that the Kantian understanding of the moral agent as an autonomous lawgiver is a reflection of the idea of the Judeo-Christian God and that this understanding lacks proper justification in the secularised world. According to Anscombe, the notion of universal moral laws obligating all humans has lost its proper context of intelligibility and legitimacy, and cannot be rescued or reinstituted by any humanistic transformations. The multicultural and global character of today's communities adds weight to this argument: On what conditions can moral maxims be willed as universal laws among people some of whom either lack or reject aspirations for universal thinking?

The third part of this volume takes up the task of clarifying the impact of Anscombe's argument in contemporary moral philosophy and of assessing the different versions of virtue ethics that have been influenced by it. In addition

to the meta-ethical debates initiated by Anscombe's arguments discussed by Hallvard Fossheim, John Drummond and Sara Heinämaa identify another line of Aristotelianism in contemporary ethics: the phenomenological approach initiated by Edmund Husserl and his early proponents and critics, most importantly Max Scheler and Nicolai Hartmann. Here the main focus is on value theory and the role feelings play in the constitution of values and in our appraisals of human actions and characters. By juxtaposing these two developments, Part III shows that the Aristotelian influence is strong not just in some sections of contemporary philosophy, such as the so-called virtue theoretical approaches, but more generally in 20th century ethics. The commonplace division of philosophy into analytical and Continental approaches proves inadequate and superficial since it hides from view important affinities and crucial agreements in the attempts to move beyond Kantian rule ethics on both sides of the dividing line.

By utilising resources both from the analytical and the phenomenological paradigm, the essays in the third part of the volume illuminate Aristotle's moral insights from a dual perspective. Both approaches highlight several Aristotelian viewpoints and both use these perspectives in their critiques of modern philosophical ethics and its ultra-rationalistic and legalistic tendencies. Thus both approaches share a number of themes: a suspicion of Kantian rule ethics and a fundamental critique of utilitarian and consequentialist approaches, a strong interest in the role of emotions and feelings in moral life, an emphasis on personal motives and moral character in the assessment of actions, and the linkage between issues of moral education and personal flourishing and happiness. As has been pointed out above, whereas virtue theoretical discussions and Aristotle's influence on them are well known, the phenomenological development of assumptions that are in important ways similar to Aristotle's has not been much studied.

3.4   *Contemporary Virtue Ethics*

Hallvard Fossheim considers Anscombe's original argument and some prominent versions of contemporary virtue ethics and responds to the empiricist criticism launched against these approaches. A common complaint against contemporary virtue theoretical approaches is that they have forgotten Anscombe's original and groundbreaking intuition according to which the ethical subject is a concrete human being faced with specific problems, not the subject matter of theoretical, or artistic, attempts to shape a perfect person. Many commentators have claimed that the Aristotelian approach has a built-in idea of perfection that is either too strong or too weak for moral theoretical

purposes. Empirically-minded critics claim that the Aristotelian concepts are too strong and that they render the moral agent deficient or strained, and this by definition. Rather than simply choosing the right action, the moral agent needs to develop virtuous dispositions of character. This seems to imply that virtuous action is relatively rare and that fully virtuous agents are sparse or virtually non-existent. Moreover, the agent must deliberate over her actions by taking into consideration not just the situational context of action, but also her own capacities and potentials and thus her life as an open-ended whole. These critical readings imply that the Aristotelian notion of ethical perfection requires constant self-inspection and striving for self-knowledge, "a care for the self", to use Foucault's words.

On the other hand, Kantian-minded critics complain that the idea of perfection is too weak since it does not help to explain the commanding force of our moral feelings or ethical imperatives but instead presupposes it. If this is true, Kantian and other extra-Aristotelian considerations are necessary if we want to make sense of the universally binding force of the "ought."

The accounts of the perfectionist aspects of virtue ethics and the recent empiricist criticisms of it open a discussion concerning the future of the Aristotelian heritage in contemporary philosophical ethics. Hallvard Fossheim answers empirical-minded and situationist critics by showing that the concept of virtue is flexible and dynamic and does not, by itself, suggest any unitary or general disposition to act in a certain way in all similar situations. It should also be emphasised that the Aristotelian paradigm not just provides us with a formal idea of human perfection but also includes detailed descriptions of special virtues, such as justice, courage, temperance, generosity, magnificence, right ambition, good temper, truthfulness or honesty, wit, and justice. And in no way does it suggest an ideal of a perfect person or a saint (cf. EN 7.7). Rather than proceeding as a thought experiment on the actions of a perfectly virtuous person—what she would do if she were to be in the position that I am in—Aristotelian reflections aim at answering the question: What shall I do now in order to establish better dispositions, to cultivate my capacities, and to promote happiness (*eudaimonia*)? In this discourse, perfection is not just another value or another criterion for right action but is the fundamental *telos* of human life.

3.5   *The Aristotelian Tradition in Continental Ethics*

John Drummond's and Sara Heinämaa's discussions further enrich our understanding of the Aristotelian inheritance by identifying another classical element in 20th-century moral philosophy that develops independently of Anscombian debates in Continental philosophical discussions on the good life

and human perfection. This element is somewhat older than the Anscombian line of thought; it dates back to late 19th and early 20th century reinterpretations of Aristotle in German philosophy, more specifically to Franz Brentano's and Edmund Husserl's creative and synthetic usage of Aristotelian and modern sources.

Brentano's and Husserl's ethics are both characterised by a strong parallel between ethics and logic as two practical disciplines (*Kunstlehre*). For both thinkers, ethics is the discipline of the art of right action,[7] and as such it is comparable to logic, which is the discipline of the art of valid thinking. Whereas logic studies the production of true propositions, valid cognitive structures and knowledge, ethics investigates the sense of right action, the formation (*Bildung*) of a good person, and our human striving for happiness or blissfulness. The task of philosophical ethics is to articulate the *a priori* laws that govern our valuations and actions. These laws do not tell us how to behave by specifying the contents of right actions or by enumerating excellences; instead they explicate the formal relations between the ideas of personal happiness, a good end, the best end, and the right action.

Both Brentano and Husserl question the Kantian heritage on its two central ideas. First, both thinkers argue that feelings have a crucial role in the constitution of values and are thus indispensable to any discussion of moral or ethical action. Second, even though both thinkers celebrate the Kantian idea of the categorical imperative or the absolute command, both also reject Kant's formulation of the imperative and substitute perfectionist and comparative concepts for Kant's universalistic terms. Brentano introduces the idea of "the best possible," and accordingly renders the imperative as "Choose the best possible" (Brentano 1969). Husserl goes further and argues that the imperative must be phrased in personal and temporal terms as "*Do from now on* and without hesitation always the best, *your best*, grasp it in norm-cognition and will it in norm-conscious volition" (2004: 253, emphasis added; cf. 1988: 74–101).

The last two essays of this collection focus on Husserl's contribution to post-Kantian ethics. In Chapter 8, John Drummond explicates Husserl's early understanding of formal and material aspects of ethics. The chapter highlights the role of feelings in the constitution of values and in the motivation of human actions. By carefully identifying the Aristotelian and Kantian aspects of Husserl's early ethics, Drummond shows that Husserl's synthetic approach

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7   Some commentators (e.g. Peucker 2008: 310ff.) translate *Kunstlehre* as "theory of art", but this is somewhat misleading since Brentano accepted the Aristotelian idea that theoretical contemplation is non-productive and thus differs fundamentally from practical teaching (cf. Hart 2006: 174–175).

is a fruitful resource for contemporary moral theory. The last chapter of the collection proceeds to a discussion of Husserl's late essays on personal happiness. Sara Heinämaa argues that this last phase of Husserl's thinking of happiness involves a deepening of his personalistic interpretation of the categorical imperative and that this new emphasis has important affinities with not only the Aristotelian but also the Stoic discourse on the good life.

4   Conclusion

By focusing on the three major topics of contemporary philosophical disputes, knowledge, rights, and action, *New Perspectives on Aristotelianism and Its Critics* shows that Aristotle's philosophy and Aristotelianism include powerful resources for breaking through some central impasses of modernism, and of postmodernism as well. In all three topical areas of the collection, Aristotelianism has a strong potential for the reconsideration of our own position and the presuppositions of our historical situation.

Through considerations of different themes and periods, the collection questions the simple opposition between Aristotelianism and its critics. While Part I shows that Aristotelianism in the philosophy of science and epistemology offers conceptual tools that open up new insights into contemporary debates, Part III argues that Aristotelianism is not only alive and well in contemporary virtue ethics but also in phenomenological ethics. Part II concentrates mainly on the critics of Aristotle and shows that the debate about subjective individual rights in the late Middle Ages is vital for understanding the modern notions of such rights. Considering this discussion is crucial for any assessment of the extent to which modern ethics involves a break with Aristotelianism. All in all, closer investigations of past discourses presented in the volume show that our philosophical tradition is not, and never has been, a confrontation between simple ideologies or a linear development from one phase to the next, but consists of changing and evolving debates that permanently refer to the past but always through new interpretations. Our present philosophical situation shows itself as a complex network of subtle threads of thought that can be unravelled, recomposed and constructively criticised with the aid of historically and philosophically sensitive readings.

The contributions to the present volume, in sum, open up new insights and develop strong, explorative, and sometimes controversial readings of the existing material. The overall purpose is to bring to light the diversity of Aristotelianism and the way it has been criticised, and to demonstrate that it is

not a monolithic doctrine but a living and developing tradition inside philosophy. By thus tracing Aristotelian influences in modern and pre-modern discourses on human knowledge, rights, and the good life, the volume identifies a set of novel research problems and illuminative conceptual distinctions which open up new perspectives on contemporary discussions on human life in its cognitive, political, and ethical dimensions.

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PART 1

Science and Knowledge

∵

Aristotle's Natural Teleology Seen from Above: A 'Cosmogony' of the Means-Goal Relation

Diana Quarantotto

Aristotle's natural teleology, which has long been blamed for hindering the birth and development of modern science, has recently excited interest due to its perceived modernity. What is being disputed is the degree of its modernity, whether it is just a surface feature or if it reaches deeper into Aristotle's thought.

The main acknowledged sign of this modernity concerns those teleological principles which govern the life and structure of organisms, considered both individually and specifically: the so-called internal or immanent teleology.[1] Broadly, this amounts to the thesis that the goal aimed at by organisms is their own good, that is, a good which coincides with their being and functioning and not with some other entity's being and functioning. In this respect, Aristotle's theory does not display any hint of anthropocentrism or theocentrism: the good is an individual thing or, at most, a specific one. Moreover, the process whereby organisms strive after their own good is now thought to have nothing to do with vitalism or animism. For—it is claimed—the final cause is not a mysterious force operating outside or against the laws of matter, for instance by backward causation or by anthropomorphic intentions. Therefore, differently from how it has been portrayed for centuries and consequently criticised, Aristotle's teleology is neither opposed nor alternative to materialism and mechanistic explanation. On the contrary, the final, material and efficient causes are perfectly compatible: they are co-operating causal factors.

For most scholars the story ends here.[2] There is nothing more to Aristotle's theory than this internal teleology. It is neither anthropocentric nor theocentric,

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1 This paper was delivered in November 2007 at the 'Aristotelianism and the Critique of Modernity' conference held at the Helsinki Collegium for Advanced Studies and subsequently submitted to the editors of this volume. Therefore, it does not take into account the works that have been published on its and on related topics since then. I am very grateful to all the conference participants, to the conference organizers and to the anonymous referee of the volume for their helpful comments and suggestions.

2 The literature where this interpretation is put forward and defended is extremely rich and sophisticated. For some of its first examples, see Nussbaum 1978, Gotthelf 1987. For some of its latest, see Johnson 2005, Bodnár 2005.

nor embedded with vitalism or animism. Viewed in this way, the theory
seems to display something more than just the mere appearance of moder-
nity. Indeed, it seems to be close to or not too distant from our scientific
standards. Accordingly, scholars have made use of modern theories and con-
cepts, especially of those teleologically coloured notions which have appeared
in contemporary science: mainly the concept of 'organisation', of 'teleonomy'
and many cybernetic notions. Also, regarding the usefulness of Aristotle's
thought to a critique of modernity, his idea that natural entities are things
of value in themselves, and not as mere instruments of human actions, has
turned out to meet our present ecological worries and our striving for a new
biocentric perspective to replace our anthropocentric one.[3] More generally,
Aristotle's characteristic intermingling of ontology and value is now being
studied as a useful point of comparison with our value-neutral metaphysical
theories and is hence provoking thought on the grounds and implications of
both approaches.[4]

However, this happy hand-in-glove harmony between contemporary sci-
ence and thought and Aristotle's theory has been disputed. Admittedly, those
who do not see this harmony are comparatively few. Nevertheless, it has been
authoritatively claimed that Aristotle's teleology has a broader scope and this
legitimates the talk of a global or cosmic teleology that encompasses the inter-
nal one.[5] This global teleology has been differently interpreted, either in terms
of anthropocentrism or theocentrism or biocentrism, and several interpreta-
tions have also been advanced about the relation between global and inter-
nal teleology. Yet, these divergences notwithstanding, the shared conviction
of these scholars is that there is, in Aristotle's view, a global teleology which is
prior to the internal one.

Here I shall not argue in favour of the one or other party. My aim is narrower
and it may be viewed as a prefatory step towards the eventual resolution of
this debate. My purpose is to show that, irrespective of a commitment to, or a
refusal of, global teleology, a cosmological perspective on Aristotle's theory is

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3   E.g. Johnson 2005, esp. pp. 287–94. By the way, one of the newest proposals in this area is a
    science called biomimicry which recalls Aristotle's idea that human *tekhnê* imitates nature
    (cf. http://www.biomimicry.net/). Biomimicry "studies nature's models and then imitates or
    takes inspiration from these designs and processes to solve human problems" (Benyus 1998).
    Moreover, it aims at introducing a way of thinking "based not on what we can extract from
    nature but on what we can learn from it" (ibid.).

4   E.g. Witt 2003.

5   The strongest version of the global-teleology interpretation has been defended by Sedley 1991,
    2000 and 2005: 167–204. Others who stress the idea that Aristotle's teleology goes beyond the
    internal structure and functioning of individual organisms include Cooper 1982, Kahn 1985,
    Code 1997 and Matthen 2001.

extremely helpful to shed some light on the meaning of the internal teleology itself. I shall suggest that a promising way to account for the structure of natural teleological processes and the function of their internal goal is to look at them not only from within but also from above. This panoramic view may also offer a glimpse of the deeper rationale which underpins the surface appearance of Aristotle's theory. Therefore, it may provide new spur to the debate between sustainers and detractors of the global-teleology interpretation. And it may also help to evaluate how much the rationale of Aristotle's theory is similar to or different from our present concerns and how useful it is to them.

The cosmological point of view is rather rare in Aristotle's writings.[6] Aristotle does not very often give an overview of the world and explain things "from above".[7] His interest is far more often taken up with a local perspective, focusing on specific, small-scale features of natural entities and processes. Moreover, the cosmological point of view is scattered throughout Aristotle's writings and is never fully articulated, which increases the conjectural nature of our understanding. These difficulties notwithstanding, it does offer a general view which, though lacking detail, shows causal connection and relations that are invisible from the bottom up and, differently from the localized perspective, is (at least in a sense) complete. Here I shall focus on one of the few passages where this view is presented: *GC* 2.10, 336b26–337a7. It deals with the continuity and eternity of generation within the sublunary part of the world and with the final cause of this process.

> [The continuity of generation and corruption] happens with a good reason. For we say that nature, in all things, always desires what is better, and that 'being' is better than 'not-being' (it has been said elsewhere how many senses there are in which we say 'being'), but it is impossible for this [= 'being'] to belong to all things, since they are far removed from the principle. Therefore god filled up the whole in the way that was left, by making generation unceasing. For this was the way to connect being together as much as possible, since coming-to-be eternally and generation are the nearest things there are to *ousia*. The cause of this, as has frequently been said, is circular locomotion, since this alone is continuous. That is why also the other things which change into each other in respect of their affections and powers, as do the simple bodies, imitate circular

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6 For a list of the most significant passages which offer this panoramic view, see Kahn 1985 and Sedley 1991, 2000, 2005: 167–204.

7 In *GA* 2.1, 731b23 Aristotle describes the explanation of the existence of the sexes as beginning "from above".

locomotion. For when air is generated from water and fire from air, and
in turn water from fire, we say that the generation has come round in a
circle, because it has returned again to the beginning. So also rectilinear
locomotion, by imitating circular locomotion, is continuous.

This is one of the passages of the corpus where Aristotle describes the striving
of natural entities for eternal being and explains the continuity and eternity of
sublunary generation as a means to achieve this goal. This topic is dealt with
very similarly also in *GA* 2.1, 731b18–732a3 and *DA* 2.4, 415a23–b7. However, in
this *GC* passage there are a few particular points which offer an unusual per-
spective on the entire matter.

For eternal being (i.e. the goal that natural entities strive for) is presented
here as being itself or, more precisely, as the primary sense of being, i.e. *ousia*.
So, the reason why natural entities strive for eternal being is that being (as
far as possible) eternal means being *tout court*, i.e. having or being an *ousia*.[8]
Eternity is not simply something good, but a necessary good, or better, the
most necessary good. This is why all natural entities strive for it, even those
that cannot achieve it fully.

Admittedly, Aristotle's theory of *ousia* is a thorny one and this particular
view on being and *ousia* is not to be found everywhere in his writings. However,
several considerations suggest that this view is not peripheral, secondary, or
even limited to this passage either.

The idea that being and *ousia* are eternal is a traditional one that stems from
the equally traditional contrast between being and becoming. Eternity is con-
sidered a distinguishing trait of *ousia* by the Presocratics, who are presented by
Aristotle as holding that only what is eternal can be an *ousia*.[9] Similarly, Plato
conceives being as what always is and never comes to be and contrasts it with
what always comes to be and never is.[10] Aristotle seems to accept this posi-
tion, at least partly.[11] In *Phys.* 2.1, for instance, he accepts the criterion for *ousia*
lying behind Antiphon's argument and construes a similar argument aimed at
showing that form is eternal too and so can be an *ousia*.[12] With a similar spirit,
in *Metaph.* 7.8, 1034a2–5 Aristotle criticizes Plato for positing separate eternal
forms where drawing the right consequences from the fact that a man generates
a man would suffice to ensure living things' formal eternity. While accepting

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8   The term *ousia* occurs at 336b33 and the theory of the different senses of being is men-
        tioned at 336b29.

9   Cf. *Metaph.* 1.3, 983b8–18, 984a9–16 (esp. 983b10) and *Phys.* 2.1, 193a9–28, 193b8–12.

10   Cf. *Tim.* 27d–28a.

11   I developed this point in Quarantotto 2005, ch. 4.3.

12   Cf. *Phys.* 2.1, 193a9–28, 193b8–11. I tackled this issue in Quarantotto 2005, ch. 4.2.

the idea that being/*ousia* is eternal, Aristotle rejects the contrast between being and becoming (i.e. their being mutually exclusive). Put more carefully, that contrast is turned into a different kind of relation: (natural entities') being is accomplished through movement.[13] This is what our passage strongly suggests. Besides stating the identity between eternal being, *ousia* and the good, Aristotle draws a hierarchy of natural entities which is ordered according to their ability to achieve eternal being or to get as close as possible to it. Aristotle claims that, although every natural entity strives after eternal being, this cannot belong to every one of them. Among natural entities, eternal being belongs to celestial bodies which accomplish it through their circular locomotion, whereas it does not belong to sublunary entities. Yet, sublunary natural entities, due to their struggle for eternity, accomplish eternal generation, which is described as the nearest thing to eternal being and to *ousia*. Moreover, this idea of closeness and of approximation to eternal being and to *ousia* is also expressed by means of the concept of *mimêsis*: eternal generation is a *mimêsis* or imitation of the circular and eternal locomotion of celestial bodies, that is, a copy of the circular process whereby celestial bodies accomplish eternal being.

Read in this way, the passage seems to provide several important clues to the core meaning of Aristotle's teleology, as it shows some of the ontological and epistemological concerns that teleology is connected with, as well as the general structure of natural teleological processes.

The identity between the primary sense of being (i.e. *ousia*), eternal being and the good suggests that the function of the final cause is to ensure natural entities the ontological status of substances.[14] For natural entities are substances insofar as they strive for eternity and partake in the everlasting, either by means of circular locomotion, as celestial bodies do, or by means of circular generation, as sublunary entities do. This is because accomplishing eternal being or eternal coming-to-be means accomplishing the primary sense of being or getting as close as possible to it.[15]

Moreover, this same thesis may also be seen from an epistemological point of view. For we know that, according to Aristotle, being eternal is a condition

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13   Plato expresses a similar idea when in the *Sophist* he rejects the contrast between being and becoming and proposes an ontology in which being includes "all changeless things and all changing things" (249d).

14   I defended this thesis with further arguments in Quarantotto 2005.

15   Incidentally, this suggests that the goal achieved through circular generation is the one which encompasses all other goals, i.e. those which govern the lives of individual organisms (see also *DA* 2.4, 415a26–b7). These are in turn hierarchically ordered, since the individual life also is a whole broken down into partial processes (see *PA* 1.5, 645b28–32). Of course, spontaneously generated organisms are an exception in this respect.

for being scientifically knowable.[16] It seems therefore that natural entities are scientifically knowable insofar as they are involved in teleological processes. Put differently, a science of nature is possible because natural processes are teleological.[17]

Lastly, this passage suggests that natural teleological processes have a circular structure[18] and hence that, at least in a sense, the goal is internal to the process itself.[19] This circular structure is the one which suits the function of teleology, since, in Aristotle's view, only circularity ensures the eternity of a process.[20] So there is a perfect conformity between function and structure.

Naturally, these are not the only inferences which may be drawn from the passage just quoted. Indeed, there is much more to say, especially about the causal relations between god, supralunary and sublunary natural entities.[21] Yet, in what follows, I shall deal in the first place with the topic of the structure and the material embodiment of teleological processes. I shall address this issue by comparing supralunary and sublunary natural entities and by asking the following question: What is the cause of the difference between the celestial bodies' accomplishment of eternal being and the sublunary natural entities' accomplishment of eternal coming-to-be? In other words, what is the cause of the difference between the circular locomotion of celestial bodies and the circular generation of sublunary ones?

Arguably, one of the main and immediate answers to this question is: matter, i.e. the fact that supralunary and sublunary natural entities are composed

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16   E.g. *NE* 6.3, 1139b9–24.

17   Cf. *Phys*. 2.2 (esp. 194b9–15). Here teleology (or, more specifically, the relation between an end and a determined material means or set of material means) is used to define the domain of physics and to distinguish it from that of first philosophy.

18   In the *GC* passage we are dealing with this holds for sublunary generation. I defended the idea that all natural teleological processes are either circular or part of broader circular teleological process in Quarantotto 2005.

19   The internal goal is the one which is achieved: e.g. insofar as sublunary natural entities are concerned, it is eternal coming-to-be. However, what in this passage is said to be desired by every natural entity is numerical eternity, i.e. something which sublunary entities do not achieve. This suggests that the goal is not only the internal one, which is achieved, but also an external one, which is not achieved. More precisely, this suggests that, while desiring eternal being, sublunary natural entities manage to achieve only eternal coming-to-be.

20   *Phys*. 8.8, 263a2–3, 265a10–2, 8.9, 265a17–8, 25–7; *DC* 1.2, 269a6–10, 2.4, 287a23–4.

21   The passage, I think, is worthy of reflection in these respects, notwithstanding those locutions which credit god with providential action and which are, I think, rightly regarded as figurative (e.g. by Solmsen 1963: 485–95, Kahn 1985: 185, and Sedley 2005: 168).

of different kinds of material.[22] Indeed, celestial bodies accomplish eternal being, since they are composed of a matter which is ungenerable and unperishable, and whose nature is to move circularly and eternally.[23] This matter is generally referred to by Aristotle as the first element,[24] the first body[25] and the first substance,[26] yet better known to us as ether, as the fifth body or as the fifth element.[27] Contrary to celestial bodies, sublunary natural entities are unable to accomplish eternal being, due to what sublunary matter is.[28] For, differently from the first body, sublunary matter is not one single element endowed with a circular and eternal locomotion. Rather, it is a set of four different elements, each of which has its own movement that is not circular and eternal, but rectilinear and finite.[29] Therefore, insofar as they are endowed with rectilinear and finite movements, sublunary elements are numerically generable and corruptible, and such that every compound of them shares their same destiny of numerical generability and corruptibility.

So, the difference between the circular locomotion of celestial bodies and the circular generation of sublunary ones may be traced back to the different kinds of matter these natural entities are composed of.

Yet, this answer, as it stands, does not seem to be very informative, for the different kinds of matter are given descriptions which repeat, more or less, what they are expected to explain.[30] But a further step in the analysis may be

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22   In fact, the explanation given at 336b30–1 is that sublunary natural entities are more distant than supralunary ones from the principle. Shortly I shall come back to this explanation to suggest that it is connected with the material difference between supralunary and sublunary bodies.

23   *Metaph.* 12.2, 1069b24–6; *DC* 1.2, 269a2–9.

24   *DC* 3.1, 298b6, *Meteor.* 338b2, 339b16–7, 340b11.

25   *DC* 1.3, 270b3, 2.12, 291b32.

26   *DC* 1.3, 270b10.

27   By the way, this is a terminological habit inherited from antiquity that either obscures (ether) or inverts (the fifth body/element) the hierarchical meaning conveyed by Aristotle's chosen wording. For the story of this terminological tradition and for an interpretation of Aristotle's terms, see Falcon 2005: 113 ff.

28   *De long.* 3; *DC* 2.9, 335a32–b6.

29   *DC* 1.2, 269a25–7. I am here neglecting the issue about the controversial 'first matter', since neither its existence nor its non-existence seems to interfere with the generability and corruptibility of sublunary bodies.

30   Actually, the answer just given may be developed to provide a better explanation in this way: in order for sublunary natural entities to achieve eternal being, they must turn a rectilinear/finite movement or a set of rectilinear/finite movements into a circular/eternal process, i.e. circular generation. Aristotle may mean this in *GC* 2.10, 337a6–7, 2.12, 338b11. So the difference between celestial and sublunary entities seems to be this: celestial

tried, as the different kinds of matter are also given descriptions by Aristotle in terms of different 'kinds' or 'ways' of being. Now, as the goal is itself a kind of being (i.e. eternal being), this redescription of matter may enable us to describe the difference between the supralunary and the sublunary matter-goal relation in terms of different degrees of distance between the being of the matter employed and the being of the goal, and eventually to see how and up to what point this distance is covered.

I shall try to clarify this point. Just in *GC* 2.9, 335a32–3, Aristotle defines matter as potential being, that is, as the potentiality of both being and not being. Moreover, from other passages (e.g. *Metaph.* 9.8, 1050b11–22 and 12.7, 1072b4–9) we learn that there is a difference, from this point of view, between the first body and sublunary matter. The first body is potential being only in respect of place, since its being or not being is potential only with reference to the different places it occupies during its eternal and circular locomotion. For this reason Aristotle calls it *topikê hulê*[31] and *pothen poi hulê* (i.e. matter for change of place).[32] By contrast, sublunary matter is potential being in respect of *ousia*, since it is generable and corruptible. Accordingly, it is labelled *genetê* and *phthartê hulê* (i.e. matter for generation and destruction).[33] This second kind of potential being is the negation (*apophasis*) of eternal being, since to be eternally means to be necessarily and therefore to lack the potentiality of both being and not being in respect of *ousia*.[34] So, sublunary matter is the negation of the goal natural entities strive for. Instead, the being of supralunary matter seems to be simply different from, and not opposed to, that of the goal, since it is potential being only in respect of place and not of *ousia*.

If this is correct, the difference between the circular locomotion of celestial bodies and the circular generation of sublunary natural ones can be traced back to the different degrees of distance between the being of the matter employed and the being of the goal. The greater this distance is, the more numerous, complex and difficult the steps needed to cover the distance and to fill the gap are. This is to say that the accomplishment of the goal by sublunary natural entities is more complex and more difficult than that of celestial bodies, and is

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       bodies accomplish eternal being with a process performed by a single material element, whereas sublunary entities accomplish eternal being with a complex process comprising a number of rectilinear movements. I shall come back to this kind of solution later in this paper.

31   *Metaph.* 8.1, 1042b6.

32   *Metaph.* 12.2, 1069b26.

33   *Metaph.* 8.1, 1042b6, 12.2, 1069b26.

34   *De int.* 12, 22a3–4; 13, 22a15–7, 22b22–3; *DC* 1.12, 282a4–10, 282b10–23; *Metaph.* 10.10.

not fully achieved, because the being of sublunary matter is more distant than the being of supralunary matter from the being of the goal.

Admittedly, this way of speaking may sound a bit strange, as it suggests that matter and goal or matter and form[35] are just different degrees on a continuum and that Aristotle's ontology is, in this respect, a monistic, continuistic and gradualistic one. Yet, this is a point of view adopted by Aristotle, albeit rarely. A clear example may be found in *Meteor*. 4.12, 389 b 29–390 a 9 (esp. 390 a 4–7). Here Aristotle describes the different levels of the material composition of organisms in terms of their different position on a continuum whose extremes are mere matter and mere form. Something similar holds for *GC* 1.3, 318b35–319a1, where matter is said to be different in respect of its being more or less *ousia*.[36] Moreover, this gradualistic point of view is clearly present in the *GC* passage we are dealing with. At 336b30–1, Aristotle claims that sublunary natural entities are unable to accomplish eternal being due to their distance from the principle. Lastly, Aristotle's conviction that natural entities partake in the everlasting and the divine in different degrees[37] may be regarded as further support for this hypothesis.[38]

Anyway, to keep things brief, I suggest that this point of view may be useful to understand Aristotle's conception of the relation between matter and form or matter and goal. Indeed, if form is the organisation of matter, then we may say that the distance between the being of the matter and the being of the goal is covered through the organisation of matter and through the movements that are the expression of this organisation. These movements would be the steps needed to fill, as far as possible, the gap between the being of the matter and that of the goal.[39]

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35   Naturally, the external goal (i.e. eternal being without qualification) and the form/goal of each natural entity are not the same. However, the form/goal is something eternal whose eternity is accomplished through circular generation. This is a sufficient reason, I think, to develop the analysis above.

36   Cf. *Cat*. 5, 2b22–8.

37   E.g. *DA* 2.4, 415b3–7.

38   On the gradualistic aspects of Aristotle's ontology, see Morrison 1987, and Rashed 2005, lxiii–lxxxv.

39   Regarding this perspective, it is worth noting two expressions used by Aristotle in the *GC* passage to describe eternal coming-to-be. At 336b31–3, Aristotle says that eternal coming-to-be is the process whereby god "filled up the whole" (*suneplêrôse to holon*) and "connected being together" (*suneiroito to einai*). These expressions suggest that the being of the whole is something which has gaps of non-being within itself that must be filled up, or holes that must be nullified by means of connections between the 'parts' of being.

A clear and helpful picture of this point is offered in DC 2.12, 292a22–b19. Here Aristotle deals with the cosmological hierarchy of celestial bodies. His goal is to solve a problem about the relationship between the distance of celestial bodies from the principle and the number of their movements. To do this, he first, compares this hierarchy to that of sublunary animals and plants and then explains it through the different ways health can be achieved by different subjects whose bodily conditions are more and more distant from health.

At the top of the hierarchy there is the one who is healthy without doing anything, since his or her body is by itself healthy. On the next level there is the one who needs to take short walks in order to be healthy, and then the one who also requires some running, and then the one who requires in addition a further action. And so the series of actions needed to reach the goal extends, and the accomplishment of the goal becomes more and more difficult, according to the distance between the subject's being and the goal's being. Lastly, there are subjects that do not reach the goal, but manage just to get as close as they can to it.

Something similar holds for the cosmological hierarchy we are concerned with.[40] Here the goal is not health, but eternal being. Moreover, the subjects that achieve eternal being are the supralunary entities, and those that get as close as they can to it are the sublunary natural ones. Yet, to give a more complete picture of this hierarchy, we may also add the first unmoved mover, which is arguably mentioned in our passage as the principle and as god.[41] We may also add the products and activities of human craft (*tekhnê*), which are repeatedly said by Aristotle to imitate natural entities,[42] yet are unable to reach any

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40   Admittedly, there are a few differences between the hierarchies Aristotle focuses on in this DC passage and the hierarchy we are tackling. First, in DC 2.12 the supralunary and sublunary hierarchies are dealt with separately (i.e. the second is used as a model of the first), and it is not clear whether they form one single system. Secondly, it is not explicitly said which is the goal natural entities strive for and whether it is the same for sublunary and supralunary ones. However, these differences between the two passages are not very profound or substantial and, in any case, they are, I think, less significant than the similarities.

41   In fact, the identification of the *arkhê* and of the god, mentioned at GC 2.10, 336b31–2, with the first unmoved mover is not straightforward. So it is not surprising that it has been questioned by some scholars (e.g. Bodéüs 2000: 162) and endorsed by others (e.g. Kahn 1985: 185, Joachim, 1922, *ad loc.*, and Williams 1982, *ad loc.*). In any case, the interpretation I am advancing does not depend upon this point, but just on the thesis that the first mover is eternal and necessary being *haplôs*, i.e. without qualification (*Metaph.* 12.7, 1072b7–8).

42   E.g. *Phys.* 2.8, 199a15–7.

degree of eternal being:[43] they are not eternal, nor substances, nor the object of scientific knowledge.

Now, this hierarchy may be made to function as a kind of cosmogony of the relation between matter and goal.[44]

At the top of the hierarchy there is the first unmoved mover. Arguably it is not correct to say that the first mover is a subject of eternal being nor that it strives for eternal being. This is because, insofar as the first mover is concerned, there is no distinction between subject and predicate, means and goal.[45] The first mover is the goal itself, eternal being itself: it accomplishes eternal being directly, without any means. The reason is that the first mover lacks any kind of duality, as it altogether lacks both matter and potentiality. It is pure and simple actuality/activity (*energeia*) and necessary being without qualification (*haplôs*).[46]

The distinction between goal and means, and hence the striving for eternity, appears together with the appearance on stage of matter, i.e. potential being.[47] This is something which happens within the boundaries of the natural world, which means that, if a natural entity is to accomplish eternal being, it must accomplish it through the matter it is composed of and its movement (*kinêsis*), that is, through potential being and its dynamic expression.[48]

But here come both the important point and the problem. *Kinêsis*, conceived as the expression of a potentiality of being and not being (i.e. what Aristotle calls *dunamis tês antiphaseôs*, i.e., "potentiality for opposites"),[49] is a rectilinear[50] and finite process. This is because it occurs between contraries (i.e. being and not being in respect of place or quality or size or *ousia*) and

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43   *NE* 6.4, 1040a1–2, 10–16.

44   Naturally, 'cosmogony' is intended here merely as an explanatory device.

45   *DC* 2.12, 292b4–7; *Phys.* 8.10, 267b25–6; *Metaph.* 12.7, 1073a5–7.

46   *Metaph.* 12.7, 1072b7–8.

47   Note that in *Physics* 2.2 the final cause is introduced to account for the unity of matter and form, i.e. for the unity of the object of natural science.

48   I call movement the "dynamic expression of potential being" as a shorthand phrase to stress the connection between movement and potential being. This connection is entailed by the definition of *kinêsis* as 'the actuality of what is potentially insofar as it is potentially' (*Phys.* 3.1, 201a10–1). I am here assuming that movement is here intended as the (incomplete) actuality of a potential for being and not of a potential for moving.

49   *Metaph.* 9.8, 1050b25, 31. That this is the kind of potentiality referred to in the definition of *kinêsis* (as "the actuality of what is potentially insofar as it is potentially": cf. *Phys.* 3.1, 201a10–1) is suggested by *Phys.* 3.1, 201a4–8, a31–b3 and *De int.* 13, 23a4–13, esp. 11–3.

50   Note that Aristotle's use of 'rectilinear', like that of 'circular', is not limited to locomotion (cf. *GC* 2.12, 338a11).

hence must come to a stop once it has reached its terminus *eis ho* ("that towards which"), as Aristotle calls it.[51] However, it is possible to accomplish eternal being through a process only if this process is itself eternal. Moreover, using the terminology of *Metaph.* 9.6, 1048b18–35, insofar as processes are concerned, eternity seems to be proper to *energeiai* rather than to *kinêseis*.[52] And, indeed, the circular processes whereby natural entities accomplish eternal being display several distinguishing traits of *energeiai*. For instance, just like an *energeia*, and differently from a *kinêsis*, a circular process has no limit.[53] So, this seems to be the general rule for the accomplishment of eternal being by material subjects: they have to perform an eternal process, i.e. a process that is arguably an *energeia*. The question then is: how can they do so, if matter is potential being (i.e. a potentiality of both being and not being) and the dynamic expression of potential being is just a *kinêsis*?

The answer I shall propose is broadly the following. The circular locomotion of celestial bodies is both a *kinêsis* and an *energeia*, yet in different respects. Instead, sublunary natural entities manage to perform an *energeia* by turning a set of rectilinear movements (*kinêseis*) into one circular process, i.e., by combining and organising several rectilinear movements that together perform an *energeia*.

Aristotle's treatment of the circular locomotion of celestial bodies is a particularly thorny one. The descriptions of circular locomotion sometimes appear to represent a *kinêsis* and other times an *energeia*.

The hypothesis that circular locomotion is a *kinêsis* is suggested by the following considerations.

Circular locomotion is always referred to as *kinêsis*. This happens, significantly, also in *Phys.* 8, where the definition of *kinêsis* as "the *entelekheia* of the movable insofar as it is movable" is mentioned: *Phys.* 8.1, 251a9–10, 8.5, 257b8–9. Moreover, in several passages circular locomotion is said to occur between points which are either contrary to or, at least, different from each other. In *Metaph.* 9.8, 1050b20–2, for instance, we are told that what moves circularly is endowed with a potentiality of being and not being *kata topon*. Similarly, in *Metaph.* 12.7, 1072b3–10, Aristotle claims that what moves circularly, insofar as it moves, can be otherwise in respect of place, unlike the first unmoved mover

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51   *DC* 1.8, 277a14–23; *Phys.* 8.8, 261b31–6.

52   On the uniqueness to *Metaph.* 9.6, 1048b18–35 of the terminological distinction between *kinêsis* and *energeia*, see Burnyeat 2008.

53   The idea that, differently from *energeiai, kinêseis* have a limit (*peras*) is repeated twice in *Metaph.* 9.6: at 1048b18 and 26–7.

which cannot be otherwise *haplôs*. Lastly, in DC 1.8, 277a24–6, Aristotle says that also circular, like rectilinear, locomotion has in a way the opposites.

By contrast, in other passages, Aristotle attributes to circular locomotion features that make it seem an *energeia*. He says (e.g. in *Phys.* 8.8, 264b9–19 and DC 1.9, 279b1–3) that, insofar as circular locomotion is concerned, what moves from point A moves at the same time and in virtue of the same direction towards point A, without undergoing contrary or contradictory movements: whereas motion along a straight line is from one point to another, circular motion is from one point to the same point. This is because each of its points is at once a beginning, a middle and an end (*Phys.* 8.9, 265a27–b 2). Moreover, in *Phys.* 8.8 264b27–8, 8.9, 265a16–7 and DC 1.2, 269a18–21, Aristotle claims that, differently from rectilinear *kinêseis*, which are incomplete (*ateleis*), circular locomotion is complete (*teleia*: cf. *Phys.* 8.8, 264b27–8, 8.9, 265a16–7; DC 1.2, 269a18–21).[54] Lastly, although Aristotle never says expressly that circular locomotion is an *energeia*, he does say that celestial bodies *aei energei* (*Metaph.* 9.8, 1050b2–3).

One way to account for this discrepancy is to attribute it to Aristotle's use of two points of view on circular locomotion: circular locomotion would be both a *kinêsis* and an *energeia*, yet in different respects. This hypothesis is suggested especially by *Phys.* 8.8, 264b24–8 and DC 1.8, 277a23–6. Here the double nature of circular locomotion seems to stem from the possibility of viewing it both as a whole and in its parts. If one considers just a segment of the process, a body that moves circularly moves between points that are different from and contrary to each other. Instead, if one considers the whole process, i.e. if one connects the end with the beginning (*Phys.* 8.8, 264b27–8), the contrariety disappears: the circularity of the process nullifies, as it were, the contrariety between being and not being with respect to place (*kata topon*). The explanation for why Aristotle considers circular locomotion from these two perspectives may be found in the stress it gives to the difference between the *energeia* of the first mover and that of celestial bodies. For, differently from the *energeia* of the first mover, that of celestial bodies entails a duality (as they are not immaterial point-like entities), although this duality is nullified by the circularity of the process. A comparison to definitions may clarify this point. Definitions are composed of two items: subject and

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54   Circular locomotion is complete (*teleia*) since it returns on itself, i.e. it is such that every one of its points is both a beginning (*arkhê*) and an end (*telos*) (*Phys.* 8.9, 265a27–b2). Each point is an end, since each is where the movement is completed, and each point is a beginning, since each is where the movement starts again and again. So circular processes have an end without being limited, as they reach completion without coming to a stop.

predicate (which is, in turn, a composite phrase). From an external point of view, these two items are distinct: they are different words. Yet, from an internal, i.e. semantic, point of view, they are identical: the predicate expresses what the subject is. The result or the sign of this identity is that there is conversion between them (*antistrephein: Top.* 2.1, 109a13–6), exactly like between the points of circular processes (*GC* 2.11, 338a10–3). In this connection, note moreover that celestial locomotion is a borderline case as it is the intermediate element between the first immaterial point-like mover and the material complexity of sublunary natural entities. Celestial bodies accomplish eternal being not as simply and directly as the first mover does, but by means of one single process: circular locomotion. Significantly, this circular locomotion is labelled by Aristotle, in line with his gradualistic approach, as the "first motion."[55]

The case for sublunary natural entities is different. For them the *energeia* (that is, the circular and eternal process whereby they accomplish eternal coming-to-be)[56] is not a movement performed by one single and simple material element. On the contrary, it is the result of a multitude of *kinêseis*, performed in the first instance by four different elements each of which is numerically generable and corruptible.[57] In other words, the accomplishment of the goal by sublunary natural entities requires covering the long distance between the being of the matter (i.e. the potentiality of being and not being without qualification, *haplôs*) and the being of the goal (i.e. eternal and necessary being), that is, turning a set of rectilinear and finite movements into a circular and eternal process.[58] This is what elements do by transforming into

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55   E.g. *Phys.* 8.9, 265a1, 8–11, 17; *Metaph.* 12.7, 1072b8–9.

56   That living is an *energeia* is clearly stated in *Metaph.* 9.6, 1048b27. The activity of living referred to in this passage encompasses arguably not only the life of individual organisms but also their circular generation. For the same faculty of the soul is the cause of both processes. Besides, generation is the goal of nutrition and hence it is prior to it (*DA* 2.4, 416b23–5). That also the circular generation of sublunary elements is an *energeia* is suggested by *Metaph.* 9.8, 1050b28–30. Here sublunary elements are said to imitate the incorruptible entities and to *aei energei*. Some scholars (e.g. Kahn 1985, 189) have claimed that the *energeia* mentioned in this passage is not the circular generation of elements, but the rectilinear locomotion of each of them. However, this hypothesis has been questioned, for instance by Bodnár (1997), who claims that rectilinear locomotion presupposes circular generation, i.e. it is the second phase of a single two-phase process of which coming-to-be is the first phase.

57   When organisms are concerned, not only the elements, but also the other levels of the material composition of organisms (i.e. uniform and non-uniform parts) are the subjects of the *kinêseis* which comprise the whole *energeia*.

58   This may be what Aristotle means when he says that "also rectilinear locomotion, by imitating circular locomotion, is continuous" (*GC* 2.10, 337a6–7). For only circular processes can be continuous (*Phys.* 8.8, 261b27–36, 263a2–3, 265a10–2) and the rectilinear locomo-

each other, and what organisms do by living and by generating another like themselves, and this accomplishment is due to the organization of matter (i.e. the form-in-the-matter).[59] Insofar as the circular transformation of the elements is concerned, this organisation consists in the reciprocal relations of the potentialities which sublunary elements are composed of: hot, cold, wet and dry. Instead, regarding sublunary living things, the organisation of matter consists in the three levels of bodily composition characteristic of organisms: elements, uniform and non-uniform parts.[60]

Of course, the gap between the being of the matter and the being of the goal is not filled completely, as what is achieved is not eternal being but eternal coming-to-be.[61] The happy moral is that, even by means of a matter whose being is the negation of eternal being, sublunary natural entities are capable of achieving a degree of eternity. Also, since eternal being is the primary sense of being (i.e. *ousia*), this achievement is fundamental to ensure that sublunary natural entities are true substances. This is a happy ending, at least relatively, since, in Aristotle's view, there is still a lower level: the level of human *tekhnê* and its products which are not true substances.

Eternal being or eternal coming-to-be cannot be accomplished by *tekhnê* and its products, as they are unable either to move or to move circularly. Their closest approximation to nature's circular functioning, says Aristotle, is the doctor who treats himself.[62] Yet, this is only apparently a circular process, as the being of the agent and that of the patient are different, and so the process does not return to the beginning as a true circular process does.[63]

As already suggested, this hierarchy may be read as a sort of cosmogony of the means-goal relation, for it shows that teleology appears with the appearance on stage of matter, and it also shows why teleology appears at that point of the hierarchy. The reason is that matter is potential being: either a potentiality of both being and not being without qualification, *haplôs* (which is the negation of eternal/necessary being *haplôs*) or a potentiality of both being

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tions of sublunary elements are just parts of their reciprocal and circular generation (cf. Bodnár 1997 and note 55 above).

59   Of course, the other causal factors which account for the eternity of generation are god and the celestial bodies. These, in *GC* 2.10, 336b26–337a7, are described respectively as the eternal being aimed at by each natural entity (yet not fully achieved by every one of them) and as objects of imitation.

60   *PA* 2.1, 646a12–24.

61   However, unlike all other sublunary natural entities, humans manage to achieve a higher degree of eternity which they do by engaging in the *energeia* of thought and contemplation (*NE* 10.7, 1177b33).

62   *Phys*. 2.8, 199b30–2.

63   *Phys*. 2.1, 192b23–7. On this point, see Quarantotto 2005, ch. 4.2.

and not being with respect to place, *kata topon* (which is different from eternal/necessary being *haplôs*). But eternal being is the primary sense of being (*ousia*), the condition anything must satisfy to be a substance and to be scientifically knowable. This is the reason why teleology is needed, and this is the reason why every natural entity strives for eternity and accomplishes a higher or lower degree of eternity.[64] So, because of this striving for eternity, matter plays the role of the means, whereas eternal being and form play the role of the goal.[65] And, the gap between the being of the matter and the being of the goal is filled through a particular kind of process: a circular process, i.e., a process which has an internal goal and is therefore an *energeia*.[66] This circular process is either the circular locomotion of celestial bodies or the circular generation of sublunary natural entities. The circular locomotion is the expression of the simple and single matter which celestial entities are composed of. By contrast, circular generation is a composite and complex process. It is the expression of the organisation of sublunary matter, an organisation which makes it possible to turn a set of rectilinear movements into one circular process.

This is the point where Aristotle's teleology meets some fields of contemporary science and thought. It is the point where the notions of 'circular process', of 'internal goal' and of 'organisation' appear. However, the path which brought Aristotle to these notions is very different from ours. It is a path which

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64   During the conference, Simo Knuuttila asked why Aristotle busied himself so much with making every natural entity more or less eternal, instead of leaving them simply to enjoy their contingency. The full answer to this question is to be found, I think, in the recondite premises of Aristotle's theory, especially in his reasons for conceiving eternal being as the condition that anything must satisfy in order to be a true substance and to be scientifically knowable. Here I shall not dare dive into this topic (on this point, see note 65 below). However, as a preliminary step, it may be said that, in fact, eternity is not something which sublunary natural entities are missing, i.e. something which is outside their nature. Aristotle does not have a genetic approach. The circular process whereby sublunary entities achieve eternal coming-to-be is not brought about by starting with rectilinear movements and putting them together additively. On the contrary, the circular process has priority over the rectilinear movements it comprises, since it is the whole they are parts of. Accordingly, sublunary generation should be viewed as a unitary, continuous and eternal process which comprises a multitude of rectilinear and finite movements.

65   Cf. *Phys*. 1.9, 192a17–9. Here form is described as "divine, good and desirable", while matter is said "naturally to aim at and to desire form in accordance with its own nature".

66   If this is correct, by performing an *energeia*, both celestial and sublunary natural entities achieve an ontological status which is similar to that of the first mover. Yet the *energeia* of natural entities differs from the first mover's as the first mover is an *energeia* without *dunamis* (in the sense of 'potentiality for opposites') and without matter, whereas the *energeia* accomplished by natural entities involves *dunamis* (in the sense of 'potentiality for opposites') and matter.

starts with ontological and epistemological concerns that have to do with the substantiality of natural entities and the foundation of natural science: its making is directed by the conviction that eternal being is something good (i.e. a goal) and the condition that natural entities must satisfy in order to be true substances and to be scientifically knowable. Yet, such a recognition does not rule out the usefulness of further enquiries into Aristotle's theory. On the contrary, an investigation into Aristotle's deeper premises (e.g. into his reasons for considering eternal being as a goal)[67] may offer new arguments to the debate between those who defend and those who attack the global-teleology interpretation. Moreover, it may uncover the foundations of an ontology that, differently from most modern and contemporary ones, is intrinsically normative. Such an investigation may help to answer the question of whether the modern divide between value and nature is really a good idea.

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67 Naturally, Aristotle's theory about the status of eternal being has long historical roots which, within the Greek tradition, go back at least to Parmenides and maybe even earlier. Indeed, some anthropologists and historians of religion have suggested that one of the main traits of the so-called 'archaic mentality' is to ascribe full reality and being only to those things and events which reproduce an eternal model (cf. Eliade 1949). But, of course, even if this way of thinking came to the Greek philosophers from such a distance, it was not received passively by them. On the contrary, it was renewed and filled with novel meanings which sprang from their peculiar ontological and epistemological concerns.

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Discursivity in Aristotle's Biological Writings*

Sabine Föllinger

1 Introduction

Contrary to a widespread dictum that Aristotle had a dogmatic-systematic style, everyone who becomes involved in reading Aristotle's scientific works notices that, quite the reverse, they are characterised by a certain spontaneity and, again and again, a promised systematics is not rigidly held to.[1] Dirlmeier spoke of Aristotle's "oral style" which was the reason why his scientific works did not convey the impression of literature.[2] Aristotle did not really conduct a monologue *ex cathedra* in his internal writings either, but a dialogue. The reflections presented here below are intended to contribute to the question: in what manner is the medium of literature used to constitute and impart knowledge in the field of biology? I would also like to direct attention to the discursive mode of representation which is found not only in Aristotle's ethical writings and his *Metaphysics*, but—surprisingly for modern expectations—in many parts of his biological writings, too.

2 The Importance of Aristotelian Biology

The importance of Aristotelian biology in the history of science can be summarised in three points:

1)   Aristotle founded the discipline of biology in that he—unlike Plato—advocates the possibility of a science of developing things, i.e. those that are coming to be, thus a natural science.[3] But not only did he have to justify his research towards differing knowledge interests, but probably

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* A more elaborate version of the argument has been published in 2012: Sabine Föllinger, Aristotle's biological works as scientific literature, in: Aude Doody; Sabine Föllinger; Liba Taub (eds.): *Structures and strategies in ancient Greek and Roman technical writing* (= Studies in History and Philosophy of Science. Part Special Issue 2012), 237–249.
1 Cf. Schopenhauer's reproach in: Arthur Schopenhauer 1988: 55f.
2 Dirlmeier 1962: 12.
3 Cf. Kullmann 1998: 55–253.

also towards a public opinion which was not receptive for such research but only took something to be sensible which promised to be a practical help in life.[4] One important passage in this respect is at the beginning of his work *De partibus animalium* (1.5, 644b22ff.). Here he makes a plea for the pleasure in research which results from the dissection of lower animals:

> ...it remains to speak about animal nature, omitting nothing in our power, whether of lesser or greater esteem. For even in the study of animals disagreeable to perception, the nature that crafted them likewise provides extraordinary pleasures to those who are able to know their causes and are by nature philosophers.... For this reason we should not be childishly disgusted at the examination of the less valuable animals. For in all natural things there is something marvellous. Even as Heraclitus is said to have spoken to those strangers who wished to meet him but stopped as they were approaching when they saw him warming himself by the oven—he bade them enter without fear, "for there are gods here too"—so too one should approach research about each of the animals without disgust, since in every one there is something natural and good. (Tr. Lennox)[5]

2) His merits lie in the field of individual zoological research. Here he made and collected an incredible quantity of material and observations of animal behaviour which still surprise biologists even of our own time—regardless of the fact that some details are wrong.

3) Perhaps his main attainment lies in the fact that he did not stop at collecting facts, but tried to integrate the facts into connected statements of reasons in accordance with his theoretical opinion of science that aetiology was indispensable for science.[6]

Among his biological works are to be reckoned (I mention just the main works): *Historia animalium*, a collection of zoological facts, the writing *De partibus animalium*, the first book of which is a programme of zoology (cf. the passage quoted before) and which can be described as being a portrayal of the comparative morphology of animals, then *De generatione animalium*, which presents Aristotle's views on procreation, genetics and ontogenesis. As the works

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4   Cf. Isocrates, *Panathenaikos* 26ff. and the ridiculing of natural history research and research in general in Aristophanes' *Clouds* (143ff.).

5   Aristotle. *On the Parts of Animals*, 2001, repr.

6   Cf. Kullmann, ibid.: 3, 55–81.

De partibus animalium and *De generatione animalium* often refer to *Historia animalium*, it can be said that *Historia animalium* represents the reservoir of facts from which the other two works can draw. In contrast to the *Historia animalium*, whose manner of presentation, in keeping with its intention, has more of a descriptive "documentary" character, *De partibus animalium* and to an even greater extent *De generatione animalium* are arguing-discursive.

The following two examples are taken from the work *De generatione animalium*. In it, Aristotle uses the fact material which he propagates with meticulous precision in his *Historia animalium* with the objective of producing connected statements of explanation by attributing the biological details to the principles of his elementary science or attempting to bring them into agreement with it. That means that what matters to him is linking his four-cause theory with biology. Books 1–3 deal with the different modes of reproduction of living creatures divided up according to animal classes. In contrast to other, pre-Socratic and Hippocratic theories, Aristotle develops his own theory of procreation, starting out from the difference between the male and female contribution to procreation—the ovum was still not discovered until long afterward, therefore there was generally a great deal of speculation in classical antiquity about the female contribution to procreation.[7] In Book 4, Aristotle develops his theories on genetics and on various hereditary transmission processes and on the process of sexual differentiation in ontogenesis, in order then to devote himself in Book V to the development of secondary attributes which form in the course of life.[8]

3   Characteristics of the Aristotelian Discursive Style

3.1   *General*

First of all, it is useful to characterise the manner of representation which is to be found in *De generatione animalium* in more detail, going back in this connection to some earlier research.[9] As already mentioned, the manner of presentation can be described as being argumentative and discursive, precisely if it is compared with the manner in which Aristotle proceeds in *Historia animalium*, but also, for instance in the *Rhetoric*.[10] I have mentioned Dirlmeier's characterisation of the "oral style" which the biological works show, indeed the manner of representation gives one the impression of being involved in a dialogue. But no

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7   Cf. Föllinger 1996.

8   Book V was originally probably a separate work; it takes up topics dealt with in PA II–IV, cf. Liatsi 2000: 13–25.

9   Cf. Föllinger 1993: 263–280.

10   Cf. Lengen 2002.

imitation of a dialogue takes place, as in Plato's works or in Aristotle's *Dialogues*, which he wrote for a wider audience and of which, as is well known, only fragments have survived. Rather, the to-and-fro of the argumentation conveys the impression to the recipient that an exchange is taking place with an imaginary interlocutor. All in all, the action is procedural, which means that in many cases results are not presented, but elaborated in a process. In this connection, the discussion often takes an aporia as its starting point.

Now in my opinion, Aristotle's form of presentation is to be seen as being methodically based in the dialectic method, such as it was applied in the school conversations of Plato's Academy.[11] Aristotle presents the dialectic method in his *Topics*. To put it briefly, the dialectic conversation follows a certain pattern:[12] the starting point for the exchange between the person questioning and the person answering is a *problêma*, thus a question with two sides, for one of which one must decide. The problem is framed in the form of a double question formulated with the Greek *poteron-ê* ("whether-or"). The questioner proposes the problem, the person answering chooses one of the two sides as his position. The person questioning takes on the other and now has the task of refuting the position of the person answering. For this purpose he asks questions, the *protaseis*. He must select them so skilfully that, as a consequence of the answers, the required result, namely the side of the problem represented by the questioner from the outset, comes out as the answer. According to *Top.* 1.2, 101a25–36, the dialectic has a threefold benefit: firstly, it is an intellectual exercise (*gumnasia*)—a point which refers back to the exercises of the academic school conversations.[13] Secondly, it is an aid for argumentation towards people from the crowd (*enteuxeis*), and it helps in finding the truth; thirdly,

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11 Cf. Föllinger (as in note 9). See also Schickert's observations (as in note 13) on Aristotle's dialectic technique.

12 Cf. Beriger 1989.

13 The art of argumentation set down in the *Topic* is the result of Aristotle's experience with conducting a conversation as practised at Plato's Academy, cf. Schickert (1977: 3) with further literature. Schickert shows in his text analysis of *Über die Ideen* [*About ideas*] that Aristotle here combines two techniques of refutation: the *reductio ad absurdum*, which recalls Parmenides, and a dialectic refutation technique. Schickert comes to the conclusion that Aristotle's literary dialectic procedure contributes to the gain in knowledge in that "following the critical objections" ("im Anschluß an krititische Einwendungen") he comes to a "revision and reformulation of the thesis discussed" ("Revision und Neuformulierung der diskutierten These").... "That could only be the point of reaching a positive clarification of the problems thrown up and in this connection, including all that which others had already contributed to the solution." ("Das konnte nur den Sinn haben, zu einer positiven Klärung der aufgeworfenen Probleme zu gelangen und dabei alles das einzubeziehen, was andere bereits zur Lösung beigetragen hatten").

as in the case of a problem it enables the arguments to be gone through from both sides and in this way to find out more easily what is true and what is false. In the case of this third point, the help in finding the truth, one can thus speak of an internalisation of the dialectic proceedings. Thus this procedure, which in fact takes place between the interlocutors, becomes the method of the scientist researching for himself. The advantage, which the scientist draws from it, lies above all in its privative benefit: by eliminating wrong solutions, one reaches the correct result. Aristotle selects this internalisation of the dialectic proceedings as a theme in *De caelo* 2.13. Here he states that the scientist researching for himself would raise objections inherent to the genre to himself until he could no longer contradict himself. The transfer is thus not made, as Dirlmeier believed, from the "innermost psychic debate with the innermost psychic opponent to the debate external opponents,"[14] but conversely the procedure designed for and dependent on an interlocutor is transferred to the conversation with oneself.

If this procedure is now followed in the medium of writing, it serves to facilitate one's own gain of knowledge. Thus with the written form itself, an ordering of knowledge takes place, above all as longer argumentation processes can be followed and as the fact material, which is integrated into the argumentation actions, can be absorbed. The integration of empirical material is, of course, quite important for biology. This procedure thus serves to gain knowledge.

At the same time, however, this procedure also serves for imparting knowledge. The question is: why, because it does not obviously appear absolutely recipient-friendly to modern readers. But it is an adequate means for imparting knowledge for Aristotle because it makes the way the scientist has arrived at his conclusion comprehensible for the recipient. Thus in *De caelo* 1.10 he writes that the reason for this is that he begins the question about the eternity of the world with a discussion of other opinions (279b7–9, Translation: W.K.C. Guthrie):

> . . . the arguments which are to follow will inspire more confidence if the pleas of those who dispute them have been heard first. It will not look so much as if we are procuring judgement by default. And indeed it is arbiters, not litigants who are wanted for the obtaining of an adequate recognition of the truth.

In this context, the situation is one of imparting knowledge. In a situation of decontextualising, in which there are not two interlocutors facing one another,

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14   Dirlmeier (ibid.): 13.

but a speaker or writer and his recipients, for reasons of sincerity, the author must also list the opponents' arguments. With the "we" the author also includes his recipients. Ultimately, he does, it is true, make the decision which opinion is the correct one, but thanks to the transparency which is given through the discussion of other views, the recipient is intended to be able to share his decision and thus the result that has been achieved. "Objectivity" analogous to court proceedings is thus guaranteed.

It can thus be said that at the moment in which the dialectic procedure is translated into the medium of writing, a fact-oriented representation is also a recipient-oriented representation. Thus the deduction of knowledge on the one hand and the presentation of knowledge on the other hand coincide. Niklas Luhmann has pointed out that these two have to be seen separately.[15] Nowadays we are more accustomed to a specialist literature which, after a first completed step of the deduction of knowledge, presents the results systematically-hierarchically in the literary representation, but we do not set down our own perception process in writing. Admittedly, with the application of the dialectic method in the medium of writing other elements also come in.

The manner of proceeding in elaborating a result in writing by a so-called agonistic process, is thus also to be found in Aristotle's biological writing— namely where it is a matter of the attempt to recognise general conformity with laws or to integrate individual knowledge into causal connections. It is thus about an ordering of knowledge. That means: it is not to be found in collections of material, thus not in the *Historia animalium*, but in works dealing with the aetiology, thus in *De partibus animalium*, but above all in *De generatione animalium*.

In general, the following characteristics of the transformation into writing can be designated.

1)   A direct or indirect question-and-answer structure is to be found, consequently direct and indirect speech, from time to time also an abrupt change from indirect into direct speech. In the written representation, the syntactic units of a conditional construction can correspond to the roles which are allocated to the interlocutors in the conversation: the *protasis* brings the premise, which results from the interlocutor's position, the *apodosis* or the refutation. The apodosis can state a *reductio ad absurdum* or, something that plays an important role in the biological context, a counterargument from empirical experience. It can be formulated as a declarative statement or, however, as a rhetorical question.

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15   Cf. Luhmann 1990: 135.

2) The author calls for a certain problem to be examined, either in the form of a verbal adjective or with the first person plural.

3) Through the formula "someone could ask" (*aporêseien an tis*), an imaginary interlocutor is brought into the game. This serves to bring a new question or a new perspective into a discussion already in progress.

4) The fact that the scientist conducts an "internal dialogue," in which, according to *Topics* 8.14, 163b9–12, he himself quotes the arguments for and against a position, which results in him, as author, having to play various roles. This leads to (from time to time abrupt) a change of perspectives, either that the premises of different positions are quoted in the form of conditional sentences, or that the point of view is changed within a direct to-and-fro. Particularly this not explicitly marked "change of speakers" requires the recipient to follow the train of thought alertly.

5) Often there is not just one counterargument, but Aristotle quotes several at once in order to make his refutation of a certain position more compelling. The passage in the *Topics* already mentioned (8.14, 163b4–9) recommends this manner of procedure within a dialectic conversation.

6) The treatment of a question is sometimes not subject to strict planning, even if its introduction, for example in the form of a prepared list of questions, suggests this. Rather, a new approach is suddenly undertaken from a different perspective, a question connected with the topic is opened, or, after a question seems to have been dealt with, further confirmation or justifications are also added. Precisely this point, the heterogeneity in the implementation, shows how writing as a medium of discursive thinking leads to a further development of oral-dialectic approaches, for instance in the form of a hierarchic list of questions put forward at the beginning of the investigation, and how at the same time a certain spontaneity and immediacy of the thinking process is maintained.

7) Presumptions are not disclosed in detail.

8) However, it is precisely this discursiveness of the thinking which the recipient also includes in the author's "internal dialogue."[16]

9) Apart from the structural features, the semantics also points to the oral style of argumentation. Thus terms taken from the field of dialectics are to be found, such as *logon labein, logon hupekhein, tithenai, luein*, etc.[17]

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16   Cf. Dirlmeier (ibid.): 12.

17   Cf. Krämer, *Platonismus*, 19f.

3.2 *Biology*

I should now like to give two examples of how this method helps to achieve biological knowledge:

1)   In *De generatione animalium* 1.17–18, Aristotle deals with the question what does the female contribution to procreation consist in. As already mentioned, it was still a long time before the female egg cell was discovered, and predecessors and contemporaries of Aristotle, including some adherents of Hippocrates, held the view that females (this designation because we are here in a biological context) possessed a seed, and to this they linked the opinion that the seed came from all parts of the body of both sexual partners, by means of which they wanted to explain the similarity of parents and children, the so-called pangenesis theory. The following text shows extracts how Aristotle refuted this pangenesis theory (translation: A.L. Peck). At the beginning is the differentiation of the list of questions. The problems (*problêmata*) are followed by questions on the nature of the seed and menstrual blood.

> Some animals discharge semen plainly, for instance those which are by nature blooded animals; but it is not clear in which way Insects and Cephalopods do so. Here then is a point *we must consider*:
>
> Do all male animals discharge semen, *or* not all of them?
> – And if not all, why is it that some do and some do not?
>
> Do females contribute any semen, *or* not?
> – And if they contribute no semen, is there no other substance at all which they contribute, or is there something else which is not semen?
>
> (And there is a further question which *we must consider*):
>   What is it which those animals that discharge semen contribute towards generation by means of the semen? and generally, what is the nature of semen, and (in the case of those animals which discharge this fluid) what is the nature of the menstrual discharge? (721a30–b6)
>
> Τὰ μὲν γὰρ προΐεται φανερῶς σπέρμα τῶν ζῴων οἷον ὅσα αὐτῶν ἔναιμα τὴν φύσιν ἐστί, τὰ δ' ἔντομα καὶ τὰ μαλάκια ποτέρως ἄδηλον. ὥστε τοῦτο θεωρητέον

> – **πότερον** πάντα προΐεται σπέρμα τὰ ἄρρενα ἢ οὐ πάντα, καὶ εἰ μὴ πάντα,
> διὰ τίν᾽ αἰτίαν τὰ μὲν τὰ δ᾽ οὔ·
>
> καὶ τὰ θήλεα δὲ πότερον συμβάλλεται σπέρμα τι ἢ οὔ,
>
> – καὶ εἰ μὴ σπέρμα, **πότερον** οὐδ᾽ ἄλλο οὐθέν, ἢ συμβάλλεται μέν τι, οὐ
> σπέρμα δέ.
>
> ἔτι δὲ καὶ τὰ προϊέμενα σπέρμα τί συμβάλλεται διὰ τοῦ σπέρματος πρὸς τὴν
> γένεσιν **σκεπτέον**
>   καὶ ὅλως τίς ἐστιν ἡ τοῦ σπέρματος φύσις καὶ ἡ τῶν καλουμένων
> καταμηνίων, ὅσα ταύτην τὴν ὑγρότητα προΐεται τῶν ζῴων. (721a30–b6)

The hierarchic arrangement of the list of questions as well as the organised manner of going through the questions raised shows a planning which one can describe as the fruit of the transformation of oral-dialectic approaches into written form.[18] However, this list is not strictly adhered to in the following discussion.

With the exhortations "we must consider" (*theôrêteon* and *skepteon*), attention is already called to the procedural aspect of the following comments, as well as the involvement of the recipients in accordance with *De caelo* 1.10. Following the list of questions, Aristotle lists the arguments of the advocates of the pangenesis theory in detail, in order then to refute them individually, whereby the reference to empirical facts, which contradict the opponents' opinions, play a central role. In this connection, the advice given in the *Topics* to use several parallel arguments at the same time in order to eliminate all possible objections from the outset, is followed. The particle "besides" (*eti*) is the indicator of a parallel argument.

In the next piece of text quoted below, Aristotle proves the impossibility that the seed could come from one of the two constituent parts of the body (*GA* 1.18, 722a16ff.). The two parts which constitute the body according to Aristotle are the *anhomoiomerê* and *homoiomerê*. In Aristotle's opinion, *homoiomerê*, "similar parts," are the constituent parts of the body in which each part consists of the same thing, for instance fat, blood, flesh and sinews. In the case of the *anhomoiomerê*, not every part is the same as the whole, these are thus, for instance, the head, hands, eye. The *anhomoiomerê* consist of *homoiomerê*.

Now to the text: After the introductory *eti* follows the question in the form of a *problêma* (*GA* 1.18, 722a16–18):

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18   On the planning of language written as signs, cf. Koch and Oesterreicher 1985: 15–43, especially 20.

Here is a further question. Is the semen drawn only from each of the "uniform" parts of the body, such as flesh, bone, sinew, or is it drawn from the "non-uniform" parts as well, such as the face and hands?[19]

Now the individual possibilities are proved to be untenable (722a18ff.):

(1) The semen may be drawn from the uniform parts only. If so,
    – (*then children ought to resemble their parents in respect of these parts only*),
    – but the resemblance occurs rather in the non-uniform parts such as the face, hands, and feet. Therefore if even these resemblances in the non-uniform parts are not due to the semen being drawn from the whole body, why must the resemblances in the uniform parts be due to that and not to some other cause?

(1) εἰ μὲν γὰρ ἀπ' ἐκείνων μόνον
    – <ἐοικέναι ἔδει ἐκεῖνα μόνον>
    – ἐοίκασι δὲ μᾶλλον ταῦτα τοῖς γονεῦσι [τὰ ἀνομοιομερῆ οἷον πρόσωπον καὶ χεῖρας καὶ πόδας]· εἴπερ οὖν μηδὲ ταῦτα τῷ ἀπὸ παντὸς ἀπελθεῖν, τί κωλύει μηδ' ἐκεῖνα τῷ ἀπὸ παντὸς ἀπελθεῖν ὅμοια εἶναι ἀλλὰ δι' ἄλλην αἰτίαν; (*GA* 1.18, 722a18–23)

(2) The semen may be drawn from the non-uniform parts only.
    – This means that it is not drawn from all the parts. Yet it is more in keeping that it should be drawn from the uniform parts, because they are prior to the non-uniform, and the non-uniform are constructed out of them; and just as children are born resembling their parent in face and hands, so they resemble them in flesh and nails.

(2) εἰ δ' ἀπὸ τῶν ἀνομοιομερῶν μόνον
    – οὔκουν ἀπὸ πάντων. προσήκει δὲ μᾶλλον ἀπ' ἐκείνων· πρότερα γὰρ ἐκεῖνα καὶ σύγκειται τὰ ἀνομοιμερῆ ἐξ ἐκείνων, καὶ ὥσπερ πρόσωπον καὶ χεῖρας γίγνονται ἐοικότες οὕτω καὶ σάρκας καὶ ὄνυχας. (722a23–27)

(3) The semen may be drawn from both uniform and non-uniform parts.
    – The question then arises: What can be the manner in which generation takes place? The non-uniform parts are constructed out of uniform

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19 Ἔτι πότερον ἀπὸ τῶν ὁμοιομερῶν μόνον ἀπέρχεται ἀφ' ἑκάστου οἷον ἀπὸ σαρκὸς καὶ ὀστοῦ καὶ νεύρου, ἢ καὶ ἀπὸ τῶν ἀνομοιομερῶν οἷον προσώπου καὶ χειρός;

ones assembled together; so that being drawn from the non-uniform parts would come to the same thing as being drawn from the uniform parts *plus* the assemblage of them.

(3) εἰ δ' ἀπ' ἀμφοτέρων,
τίς ὁ τρόπος ἂν εἴη τῆς γενέσεως; σύγκειται γὰρ ἐκ τῶν ὁμοιομερῶν τὰ ἀνομοιομερῇ ὥστε τὸ ἀπὸ τούτων ἀπιέναι τὸ ἀπ' ἐκείνων ἂν εἴη ἀπιέναι καὶ τῆς συνθέσεως·

The first possible position of the *problêma* is refuted by observations: If the seed came from the similar parts (*homoiomerê*), the children would have to look similar to the parents with respect to these, thus, for instance, with respect to fat and sinews. However, observations show that they resemble each other with respect to dissimilar parts (*anhomoiomerê*), thus the face, etc. The second refutation is made through a *reductio ad absurdum*: if the seed came from the *anhomoiomerê*, it would not come from all parts of the body. But this contradicts the presumption.

It is interesting to observe now how distinctive features of writing—on the one hand a greater planning effort in the form of the disjunctions made, on the other hand syntactic ellipsis through the omission of the verb in all three "premises" or *protaseis*—go hand in hand with the elements which are typical for a language of proximity. Thus the aposiopesis in the case of the first refutation is typical for the direct train of thought. Here it is not explained linguistically that, in the case of the assumption that the seed came from the similar parts (*homoiomerê*), the children would have to resemble the parents with respect to those parts alone. Rather, by omitting this idea, only the empirical phenomenon is explained linguistically that the children resemble the parents more with regard to the dissimilar parts (*anhomoiomerê*). This probably caused Peck to make the addition ἐοικέναι ἔδει ἐκεῖνα μόνον ("then children ought to resemble their parents with respect to the dissimilar parts only").[20] In the case of both refutations, a further logically not really necessary confirmation of the result is attached (*eiper* etc. and *prosêkei*). This parallel argumentation is intended to increase the compellingness of the refutation. The discussion of a third assumption, as now follows, serves the same purpose; strictly speaking it is inadmissible in the case of a *problêma* and it was not included in the preceding list of questions either. Rather, this possibility is inserted subsequently. The argumentation is intensified, so to speak, into a concentrated counterattack on the position to be rejected.

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20   See the critical apparatus of the edition by H.J. Drossaart Lulofs 1972 [¹1905].

The next section comes from the examination of the question how, assuming the pangenesis theory, one has to imagine the separate existence of the individual parts in the seed.

In this connection, Aristotle goes over to the direct question form (*GA* 1.18, 722b3–5):

> Further, if the parts of the body are scattered about within the semen,
> – how do they live?
> If on the other hand they are connected with each other,
> – then surely they would be a tiny animal.
> And what about the generative organs?
> Because that which comes from the male will be different from that which comes from the female.

> Ἔτι εἰ μὲν διεσπασμένα τὰ μέρη ἐν τῷ σπέρματι
> – πῶς ζῇ;
> εἰ δὲ συνεχῆ
> – ζῷον ἂν εἴη μικρόν.
> καὶ τὰ τῶν αἰδοίων πῶς;
> οὐ γὰρ ὅμοιον τὸ ἀπιὸν ἀπὸ τοῦ ἄρρενος καὶ τοῦ θήλεος.

As one can see, the sentences become shorter and everything goes rather quickly. Thus the first refutation is formulated as a question which already contains the untenability of the assumption. Furthermore, if the parts already exist, are they separated in the seed?

Thus this passage conveys the spontaneity of a discussion, which really draws the recipients into a "court trial" on the different positions and serves to obtain clarity about the way in which Aristotle derives his own view.

2) A second example is that of Aristotle's research on bees, or to put it more precisely: on the question which sex the individual groups of bees have and how procreation takes place (*GA* 3.10, 759a8ff.).[21] This question proved to be a mystery for the whole of Antiquity and has, by the way, only been satisfactorily resolved in the past few decades. Aristotle deals with the problem in three passages of his work. Two are to be found in the *Historia animalium* (*HA* 5.21, 553a17ff. and 9.40, 624b12ff.), and one in his writing *De generatione animalium* (3.10, 759a8ff.). In accordance with the different character of both works, in the *HA* he brings various—in part

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21   Cf. Föllinger 1997: 375–385.

also contradictory—items of information alongside one another, because in both chapters of *HA* Aristotle quotes various items of information about the behaviour of bees which he evidently obtained from beekeepers. In this connection, he simply quotes various opinions which partially contradict one another (using "they say," *phasi*), without discussing and evaluating them. This is in accordance with the fact that the *Historia animalium* represents a collection of material. In *De generatione animalium*, by contrast, in a first step, in a long discussion he refutes all other views and in a discursive procedure develops his own opinion on how things stand with the procreation and the sex of bees. This manner of proceeding is in keeping with the aetiological character of *De generatione animalium*. In *De generatione animalium* he develops his result in a long process. I would like to present this result briefly. Aristotle distinguishes three groups of bees (*genê*): kings or leaders (*basileis* or *hêgemones*; for almost the whole of Antiquity the leaders of a colony of bees were male), worker bees (*melittai* or *ergatides*), and drones (*kêphênes*). He comes to the conclusion that the kings procreate themselves and the worker bees, the worker bees the drones, while the drones themselves do not procreate. There are no separate sexes in any of the groups, and the procreation takes place without copulation. This is possible because the worker bees have combined both male and female attributes in themselves, thus are, so to speak, hermaphroditic. This also applies to the kings, even if Aristotle does not explicitly say so.

Structure of the passage GA *3.10, 759a8ff*:

The generation of bees is a great puzzle.
If it is a fact that certain fishes are generated without copulation, the same probably occurs among bees as well—or so it seems from appearances.

Ἡ δὲ τῶν μελιττῶν γένεσις ἔχει πολλὴν ἀπορίαν.
εἴπερ γάρ ἐστι καὶ περὶ τοὺς ἰχθῦς τοιαύτη τις γένεσις ἐνίων ὥστ' ἄνευ ὀχείας γεννᾶν, τοῦτο συμβαίνειν ἔοικε καὶ περὶ τὰς μελίττας ἐκ τῶν φαινομένων. (759a8–11)

A catalogue of opinions which must be refuted follows.
  Refutation (*759a24ff.*).

We have only to bring before our minds the special and particular facts concerning bees, on the one side, and on the other the facts more

generally applicable to other animals, to see that all of these theories are impossible.

Ταῦτα δ᾽ ἐστὶ πάντα ἀδύνατα συλλογιζομένοις τὰ μὲν ἐκ τῶν συμβαινόντων ἰδίᾳ περὶ τὰς μελίττας, τὰ δ᾽ ἐκ τῶν κοινοτέρων τοῖς ἄλλοις ζῴοις. (759a24–27)

Result (*759b27ff.*):

Λείπεται…

Etiology (*760a4ff.*)
    Provided aporia: Sex of the "kings"
    Provided empirical evidences (*760b15ff.*)

The result is provisional (*760b27ff.*)

Aristotle begins the first part of the implementation, which involves a discussion of the facts, with the declaration that the procreation of bees is an aporia, that means: a problem which requires discussion (759a8: Ἡ δὲ τῶν μελιττῶν γένεσις ἔχει πολλὴν ἀπορίαν). The discussion now following proceeds in the form of conclusive proceedings. Because other opinions (quoted with *tines*) are refuted by the fact that their incompatibility with certain premises is shown. However, these premises are not *endoxa* as in dialectics, but are zoological observations of a general or special kind. Aristotle himself explains this method of dialectic procedure with premises from empiricism (759a24ff.): All preceding theories prove to be untenable if one draws conclusions from the facts of bees' behaviour and from general zoological observations. A (supposedly) empirical fact is the basis with which the theory to be developed must be in accord, that bees procreate without copulation (nuptial flight!). The result must thus be in accordance with this presumption and also will be so.

The text makes evident that Aristotle first quotes the different opinions on the procreation of bees in a kind of catalogue. Then he refutes the, in his view, wrong opinions—first the one that bees would bring their brood from elsewhere (759a27–b1), for example with the generally immutable law that all living creatures only take care of their own brood. Again the written form is that the *protasis* of a conditional sentence gives the premise which results from the interlocutor's position, the *apodosis* or the refutation. Then (from 759b1) follow the refutations of individual opinions on the sex of bees. Linguistically, the wrong opinion is introduced with "it is not reasonable" (*ouk eulogon*, this expression comes from dialectics), then a sentence introduced with "since" (*gar*) substantiates the incorrectness, in that the untenability of the opposing

opinions is proved in view of general zoological tenets. These contradictory observations are mainly introduced by the particle *de* (or *nun de*).

After the refutation of the wrong opinions, the solution is introduced with *leipetai.* This eliminative procedure as the way to the perception is justified in the *Topics* (8.14, 163a36ff.).

After the conclusion of this discursive procedure begins the aetiological part (*aition d'hoti: GA* 3.10, 760a4). General immutable laws are indicated here by expressions of necessity and nature (*anagke, anagkaion, to kata phusin, phusei*). Aristotle's famous concluding sentence (760b27ff.) makes it clear that he himself sees his whole result as provisional, as new empirical findings could throw everything overboard:

> This, then, appears to be the state of affairs with regard to the generation of bees, so far as theory can take us, supplemented by what are thought to be the facts about their behaviour. But the facts have not been sufficiently ascertained; and if at any future time they are ascertained, the credence must be given to the direct evidence of the senses more than to theories,—and to theories too provided that the results which they show agree with what is observed.

This methodological comment by Aristotle sheds light on why the discursive procedure was of central importance for him in gaining and imparting knowledge, also in the field of natural science.

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Naturalised *versus* Normative Epistemology: An Aristotelian Alternative

Miira Tuominen

1 Introduction

A standard way of describing the core of modern epistemology and philosophy of science is to refer to Descartes and his attempt to find an indubitable basis for science and knowledge through the method of doubt. As is also well known, such an approach has come under heavy criticism during the 20th century, most notably by W.V.O. Quine in his naturalised epistemology. According to Quine, there is no way of securing the basis for science—without at the same time supposing some science or knowledge. Some have interpreted Quine as suggesting that epistemology should simply be *reduced* to science and consist solely of descriptions of how the human cognitive psyche works. However, he can also be taken to suggest that sceptical doubt in a sense *presupposes* at least some slices or sections of the continuum between everyday cognition and science.[1] As has been noted,[2] this hardly comes as a surprise, since ever since Hume's critique of induction, it has been clear that theories are underdetermined by observation, and any attempt to deduce theories from perceptual experience alone is necessarily vulnerable to a similar critique.

My task here is not to say anything specific about Quine, how exactly his claims should be interpreted and whether he is open to the criticism that, e.g., Jaegwon Kim and Hilary Putnam have presented. The important point for my purposes is that the debate about naturalism in epistemology in the 20th century has brought the question of normative and descriptive aspects of epistemology into focus. I would be inclined to think that there is no clear-cut way of severing the normative aspects from the descriptive ones but that the two are intricately intertwined. On the one hand, it would seem that all descriptive epistemological accounts have some normative force—or at least

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1 I am grateful to Panu Raatikainen for a discussion on this point. It is not entirely clear to me whether Quine's point applies to ancient Pyrrhonian scepticism of the sort that Sextus Empiricus purports. However, this is not essential for the present argument.

2 See, e.g., Kim "What is Naturalised Epistemology?" (1988).

some normative implications. On the other hand, the descriptive accounts of cognitive psychology seem to require some normative presuppositions to be pertinent from an epistemological point of view. In general, if enquiries into human psychology show that our cognitive mechanisms work in a certain way, this is epistemologically relevant (only) in so far as we suppose or can show that some of the mechanisms are *more reliable* or more trustworthy than others, and this already involves a normative dimension. Further, an important point in Kim's criticism of Quine is that central notions in modern epistemology such as "belief" only make sense in a normative context. The mere identification of beliefs seems possible only in a context in which it is assumed that beliefs function as the epistemological (and normatively so) basis for other beliefs or for action.[3]

In what follows, I shall consider Aristotle's theory of knowledge and ask what role normative and descriptive considerations play in his theory. Does Aristotle present a purely descriptive theory of human (and animal) cognitive capacities in the *De anima*? Does he then suppose that this account *replaces* the kind of considerations concerning, for example, the definition of knowledge and the (un)reliability or relativity of the senses familiar to us from Plato's *Theaetetus*? Or, does Aristotle suppose that his brief account of the reliability of the senses in *Metaphysics* Book 4 (Chapters 5–6) offers a secure basis against the sceptic and guarantees the status of perception as a starting point (*arkhê*) for knowledge (*epistêmê*) in *Posterior Analytics* 2.19 (99b35)? I shall argue that both of these interpretations are misguided. Rather, I claim, Aristotle's general conception of knowledge differs in important respects from modern epistemology and thus offers a fresh insight into central questions of the modern discussion. From the Aristotelian perspective, considerations concerning various kinds of knowledge and the human cognitive mechanisms are both descriptive and normative, but the relation between the two is understood very differently from the modern, Cartesian-based epistemology. I shall not be considering the much-discussed problem of how the dialectical justification of beliefs, as we could call it, in the *Topics* is related to Aristotle's account of knowledge in the *Posterior Analytics*.

It would, of course, be preposterous to claim that Aristotle was aware of the kind of arguments we find in Quine, Kim or Putnam, and my argument certainly does not presuppose or state that he was. Rather, my claim is that Aristotle operates with a relatively firm, even though mostly implicit, conception of how various considerations concerning human knowledge relate to each other and about which claims one needs to argue in various contexts

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3   Cf. also Putnam "Why Reason Can't Be Naturalized" (1982).

in which knowledge and cognition are discussed. My argument is not that Aristotle was right about the relation between epistemology and philosophy of science, or that he had a correct view of either of these two disciplines that for him were not separated in the way they are for us. Rather, my argument is that Aristotle's approach can be used to shed new light on the descriptivist critique of modern epistemology and suggest fresh criticism of the contemporary discussion.

My additional motivation to consider these questions derives from a recent book by Lloyd Gerson on ancient epistemology[4] in which he argues that Aristotle was an epistemological naturalist in the sense that he thought that human knowledge is a natural state or a natural kind (2009: 2). I do agree with the general point that Aristotle, in some sense, saw human knowledge as being natural and also took human cognition partly as a suitable object for natural philosophy, but I do not think that this interpretation is true without qualifications. However, my argument is not directly about Gerson's reading but has a slightly different focus, starting from the 20th-century discussions just explained.

2   The Epistemology of the *Posterior Analytics*?

2.1   *Preliminary Considerations*

A major complication with any comparison, analysis or joint discussion involving Aristotle and contemporary epistemology is that Aristotle's main treatise that discusses knowledge (*epistêmê*) most extensively, the *Posterior Analytics*, is not an epistemological work resembling, for example, Descartes' *Meditations*. Nor is it very much like Plato's *Theaetetus*, which includes an attempted definition of knowledge in terms of the notion of conception or belief (*doxa*). The *Posterior Analytics* does, to some extent, overlap with both the modern epistemology and what we understand as philosophy of science but does not coincide with either or with any simple conjunction of the two. Even though Aristotle's discussion contains some elements that resemble the topics discussed in the *Theaetetus*, for example the regress argument (*An. Post.* 1.3), his approach is rather different. To mention one thing, the definition of knowledge (*epistêmê*) is not the question that sets the agenda for Aristotle's treatise. The phrase that *epistêmê* is always with an account (*meta logou* that partly

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4   Lloyd P. Gerson (2009). Gerson also argues for the "naturalistic" interpretation of all other main thinkers in antiquity. I find the interpretation somewhat exaggerated but shall only consider Aristotle in this article.

coincides with the last attempted definition in Plato's *Theaetetus*, 201c9–d1) occurs in the *Posterior Analytics*—at the very end (in 100b10), only 5 lines before the last line of the treatise—but, as we shall see below, Aristotle does not understand knowledge as justified belief.[5] Whether Plato did is a topic for another discussion.

Important material for Aristotle's conception of knowledge is found in other treatises as well. For example, insofar as responding to sceptics is taken to be a major theme of epistemology, some of Aristotle's discussions in the *Metaphysics* (such as 4.5–6) and the *De anima* (2.5–12, for example) must be considered as well. This is not necessarily a problem: we just need to jointly consider everything in whichever work by Aristotle is relevant for a theory of knowledge and philosophy of science. However, it remains a fact that Aristotle's discussions are framed rather differently from contemporary epistemology. Conversely, the *Posterior Analytics* is Aristotle's main work on knowledge but discussions concerning the reliability of the senses do not, to say the least, play a prominent role in it. I shall further clarify this point in Section 4 below.

Before considering knowledge in the *Posterior Analytics* in more detail, one remark on the translation needs to be made. I shall use the translation "knowledge" for the Greek *epistêmê*, but it needs to be born in mind throughout that knowledge as *epistêmê* in the *Posterior Analytics* does not coincide with the object of modern epistemology. I shall further discuss this point and elaborate on my reasons for the translation in Sections 2.2 and 2.3 below.

2.2   *Aristotle's Description of Knowledge in the Unqualified Sense*

Early on in the treatise, Aristotle asks what knowledge (*epistêmê*) is in the unqualified or most proper sense (*haplôs, kuriôs*) and responds as follows:

> A. We think we know (*epistasthai*) each thing in the unqualified way (*haplôs*) and not in the sophistic, accidental manner, when we think we cognise (*ginôskein*) the reason why the thing (*pragma*) is, that it is the reason for it, and that it cannot be otherwise. It is thus clear that knowing (*to epistasthai*) is something like this, since, of those who do not know as well as those who do, the former *suppose* that they are in such a state, and those who know also *are* in such a state. So that of which there is unqualified knowledge (*hou haplôs estin epistêmê*) cannot be otherwise. (*An. Post.* 1.2, 71b9–16.)[6]

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5   On this I agree with Gerson (2009).

6   All translations are mine, unless otherwise indicated. Italics are mine as well.

This passage makes clear, first, that Aristotle is not prepared to accept the knowledge in the unqualified sense of accidental particulars, be they things or facts—Aristotle's *pragma* on line 11 allows both readings. Secondly, knowledge without qualification requires knowing or cognising (*ginôskein*) the reason why the fact or thing is. Thirdly, we need to know that "it cannot be otherwise." The third condition is open to two readings. Either Aristotle is saying that (i) we know the reason for the thing's being and we know that the *thing* (or the fact) cannot be otherwise, or, (ii) we know the reason for the fact or the thing and we know that this *reason* cannot be otherwise.

It might seem that the first reading of the condition merely repeats what Aristotle says at the end of the passage: that unqualified knowledge needs to have non-contingent objects. However, this impression is not entirely correct. The first reading states that we need *to know* or cognise that the object is non-contingent, whereas the specification at the end merely states that *it needs to be*. Reading (ii), on the other hand, might seem problematic since Aristotle is famous for holding that "cause" is the kind of a thing that can be "said in many ways," that is, being a cause or a reason can be taken in four different ways.[7] If the same fact can have many causes (as Aristotle allows), does this not jeopardise the claim that the cause cannot be otherwise?[8] Perhaps this would not be a problem, since Aristotle might suppose, for example, that even though being a cause can be understood in four different ways, the cause within each type must be non-contingent. My overall argument is not directly dependent on the detailed interpretation of the conditions in the above description of knowledge in the unqualified sense, and thus I shall not dwell on this topic.[9]

From the viewpoint of this contribution the most important aspects of Aristotle's description are the following two. First, Aristotle excludes knowledge of isolated facts from the scope of knowledge in the unqualified sense.[10] In order to know a thing in a proper sense and not in a sophistic manner, we need to know its reason or cause. Secondly, as already pointed out, contingent facts (e.g., that Socrates is white or pale,[11] that the approaching person

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7   For Aristotle's analysis, see Johnson (2005: 42–49).

8   For multiple kinds of causes in syllogisms, see, e.g., Johnson (2005: 49–58); for difficulties in formulating final causes in syllogisms, see Leunissen (2007) and for expressing natural processes in syllogisms Leunissen (2010a, Chapter 6) and Leunissen (2010b) with comments by Gotthelf (2010).

9   For other scholars on this passage, see Barnes (1993: 89–93), McKirahan (1992: 22–24); for the qualification "we think we know," see Johnson (2005: 94).

10   Cf. the case for practical knowledge in Charles (2009: 47).

11   Socrates' whiteness is Aristotle's standard example of a contingent fact. Typically, it is understood as referring to the colour of Socrates' skin, which can change either (i) when

is Callias) and of contingent causes (for example, if there is lightning while someone is walking, walking is only a contingent cause of the lightning; *An. Post.* 1.4, 73b11–13) do not count as objects of knowledge in an unqualified sense either. Thus knowledge in the proper sense is about a complex of non-contingent facts in their non-contingent mutual relations.[12]

One might object that, apart from the point about non-contingency, this is not an important difference between Aristotle and modern epistemology, since what epistemological foundationalists and coherentists in their respective theories require is precisely that knowledge claims must have suitable connections with other claims—if, from the foundationalist point of view, they are not self-evident or basic ones. Furthermore, these approaches allow for variety, and one can, for example, combine foundationalist and coherentist approaches into a mixture ("foundherentism").[13] Thus modern epistemology is open to the view that some knowledge claims can be justified directly (or causally) and others by virtue of their status in the body of knowledge claims, either as validly derived from the directly justified claims or by supporting or being supported by a number of other knowledge claims in the body. This is a fair objection but, as I see it, it does not capture the important difference between the knowledge-making features in Aristotle's theory and the modern notion of epistemological justification. I shall return to this point in Section 5 below.

Another central interpretive question in Aristotle's description above is how to translate the operative knowledge terms: *epistasthai* and its derivatives and *gignôskein* and its derivatives. The former is the one from which the noun *epistêmê* derives and it is the definition of *epistêmê* which Plato's *Theaetetus* is concerned with (145e9, 146c3). In the context of the *Theaetetus*, "knowledge" is a fairly uncontroversial translation of *epistêmê*; it is the definition of knowledge, as opposed to science for example, that is the main theme of the dialogue. However, even bracketing the possible differences between what Aristotle talks about in the *Posterior Analytics* and what modern epistemology is concerned with, there are instances in the treatise in which "knowledge" would simply be an awkward translation of *epistêmê*. For example, Aristotle talks about *epistêmê* in the plural (*epistêmai*) and mentions as *epistêmai*

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he gets well again, if his paleness is caused by an illness, or, (ii) when he gets tanned, if his paleness means "not being tanned." Gerson (2009: 69) interprets the example as saying that Socrates is white-haired.

12   Further, explanation, for Aristotle is not merely an epistemological notion; it is a metaphysical one as well. See also Moravcsik (1991).

13   Susan Haack, *Evidence and Inquiry* (1st edn. 1993).

different sciences, such as arithmetic and harmonics, astronomy and geometry, mechanics and optics (76a10, 76a23–25), and these are best translated as "sciences." In general, it would not be accurate to say that Aristotle's project in the *Posterior Analytics* is exclusively epistemological in the sense of ruling out, for example, a conception of the kind of systematic enquiry we now conceive as science.

2.3   *Epistemology?*

Is Aristotle, then, concerned with epistemology at all in the *Posterior Analytics*? This clearly depends on how epistemology is defined, and, as already mentioned, the modern conceptions of the field do not coincide very well with this Aristotelian treatise. For example, the reliability of the senses, perceptual illusions and errors are not treated in the *Posterior Analytics* at all. As indicated above, Aristotle does discuss these issues briefly in the *Metaphysics* (Book 4 Chapters 5–6) and explains perceptual mechanisms in more detail in the *De anima* (Book 2 Chapters 5–12). In the *Metaphysics* (starting from 4.4) he also responds to some previous thinkers who had rejected the principle of non-contradiction—a denial that Aristotle treats as one of the sceptical challenges. However, he does not even refer to the argument in the *Posterior Analytics*. The same applies to his discussion of perceptual illusions and errors in the *Metaphysics*; there is no reference to them in the *Posterior Analytics*.

   This might, of course, be due to chronology. The *Posterior Analytics* is, in all likelihood, an earlier work than *Metaphysics* Book 4. Thus, it would only seem natural that the reference is lacking. However, this is not a satisfactory response, since if the traditional chronology is right, we just need to reverse the question. If Aristotle thinks that the discussion of perceptual errors in *Metaphysics* Book 4 provides some kind of foundations for his account of knowledge in the *Posterior Analytics*, and if the former is a later work than the latter, the question becomes: Why does he not state in *Metaphysics* Book 4 that his discussion is relevant for the foundations of the kind of knowledge that the *Posterior Analytics* is concerned with? He may surely just assume that in order to secure the possibility of the kind of knowledge that the *Posterior Analytics* is concerned with, the discussion on perceptual errors in *Metaphysics* Book 4 needs to be supposed, even though this is not explicitly stated. However, this suggestion begs the question: in order to show that Aristotle assumes that the discussions in *Metaphysics* Book 4 secure the grounds for knowledge or enquiry in the *Posterior Analytics*, the suggestion just assumes the connection.

   Another possible version of a similar view would be to concentrate solely on the *Posterior Analytics* and to claim that Aristotle makes the crucial moves to secure the foundations for knowledge in that treatise. The form of scepticism

that he is interested in in that context is the one claiming that there are no starting points or first principles (*arkhai*) of *epistêmê* (1.3): either (i) the explanations or proofs that are needed to produce *epistêmê* would need to extend to infinity and, because it is impossible to know infinite explanations or proofs, this would make knowledge impossible, or (ii) the proofs would need to go in circles, in which case they would beg the question and be useless, and there would, again, be no knowledge in the unqualified sense. Against these challenges, Aristotle claims that the starting points or principles do exist and that we know them in a way that is not based on knowing a proof or an explanation. However, he only returns to this question in the last chapter of the treatise (2.19). One might expect that this is where he establishes the existence of unproved knowledge in the way that responds to the sceptic encountered earlier in the treatise. However, as I have also argued previously, such an interpretation of the last chapter of the *Posterior Analytics* is not convincing.[14] I shall return to this question below in Section 4.

Regarding the differences between Aristotle's account and modern epistemology, some scholars have argued that we should not translate *epistêmê* in the *Posterior Analytics* as "knowledge" but as "understanding."[15] This has also been coupled with translating "cognise" or "know" (Greek *ginôskein* in the above-quoted passage A. line 11) as "being aware" of the reason or cause of the thing we think to have *epistêmê* of. These solutions in translations would signal to the reader that Aristotle is not in fact concerned with epistemology as how we understand it but with something else: he is concerned with a network of reasons for facts that one understands by being aware of the reasons for those facts *and* by being aware of the non-contingency of these facts and/or their reasons. As indicated above, I share the view that Aristotle's concern in the *Posterior Analytics* should not be identified with modern epistemology in a straightforward manner. However, I would not like to reject the translation "knowledge" for *epistêmê* altogether, since I see it as important to preserve the dialectic between Aristotle's discussion and Plato's *Theaetetus*.[16] Instead of claiming that Aristotle is, from the very start, discussing something essentially different from Plato's *Theaetetus*, as it would seem if one translated *epistêmê* as "understanding," it would be more accurate to say that Aristotle is concerned with the same term but gives it a very different interpretation.

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14   E.g., Tuominen (2010). See also Tuominen (2007: 103–112).

15   The suggestion has been made by Myles Burnyeat (1981), and it is adapted in Barnes's translation (in the *Complete Works of Aristotle* 1984); see also Barnes 1993.

16   Cf. Gerson (2009: 63–69). The relation between Aristotle's account and the one in Plato's *Meno* is more complicated. I shall not discuss the *Meno* in this contribution.

Therefore, I do not think we should claim that the *Posterior Analytics* is not an epistemological work at all. Rather, instead of talking about something altogether different from knowledge, Aristotle's analysis implies that knowledge (*epistêmê*) in the unqualified sense should *not* be analysed in terms of belief (*doxa*). Aristotle distinguishes knowledge and belief in the *Posterior Analytics* (1.33, 88b30–89b6) and thus the notion of belief makes an appearance in the context, but, to say the least, the notion is not central in the treatise. Further, the whole point of the distinction is to say that knowledge is not a type of belief but a cognitive disposition or state that has different objects from those of belief.[17]

I have now suggested that Aristotle's overall analysis of knowledge deviates from modern epistemology in important respects.[18] First, his project is not to secure indubitable foundations for knowledge and build a science (or a philosophy of science) on those foundations. Aristotle's alternative analysis of how the starting points (*arkhai*) of knowledge become known will be discussed in more detail in Section 4. Secondly, he does not analyse knowledge in terms of belief in general or in terms of justified belief in particular. Thirdly, Aristotle's analysis should not be understood in terms of modern naturalism either. I shall return to this last-mentioned point in Section 5. Fourthly, even though Aristotle's approach to perception bears some resemblance to reliabilism in modern epistemology, there are important differences between the two as well. How, then, does he understand *epistêmê* in the *Posterior Analytics?* What are the crucial features of *epistêmê* according to Aristotle?

3   *Epistêmê* in the *Posterior Analytics*

3.1   Epistêmê *and Proofs*
As has been seen above, the most important features of knowledge in the unqualified sense in the *Posterior Analytics* are the non-contingency of its

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17   See also Gerson (2009: 68–70).

18   It needs to be noted that I am by no means claiming that my discussion in this essay would exhaust the possible connections between Aristotle's account and modern epistemology in its normative and descriptive aspects. For example, my account is compatible with the claim that Aristotle's account of perception resembles reliabilism as well as the claim that there are normative methodological considerations in *Posterior Analytics* Book 2, especially with respect to the question of how one can identify the cause of a phenomenon. As to the latter, however, I tend to think that the capacity to recognise the cause presupposes intellect as Aristotle describes it, even though the intellect is (normally) not activated without extensive research into a subject matter.

objects and the awareness or cognition of reasons. In Book 1 Chapters 2–6 he lays out the following conditions for the starting points for knowledge. They need to be: necessarily true, prior in nature to and explanatory of the conclusions, universal (or primarily or proximately universal) and express essential connections between things and their predicates, or phenomena and their causes.

Further, according to Aristotle, the objects of knowledge in the unqualified sense are the conclusions of epistemic or scientific (*epistêmonikos*) proofs or demonstrations (*apodeixis*, e.g. in 71b17–18). However, in a sense, the conclusions are known or cognised already at the beginning of the enquiry. As Aristotle points out at the very beginning of the *Posterior Analytics* (1.1, 71a1–2) and specifies later at the beginning of the second book, all inference-involving knowledge comes about from pre-existent cognition (*gnôsis*). At the beginning, the facts are known in a rather weak sense: usually they are just observed. Yet even launching a scientific enquiry (an enquiry that could lead to *epistêmê* proper) requires that the observed fact is also cognised to have a regular non-contingent cause (*dia ti esti*) or a definable essence (an account of what it is, *ti esti*), even though at the beginning it is not known what the cause or essence is. When one has cognised a fact (a lunar eclipse, a vine shedding its leaves) or a thing (a human being, a god) as something real, one then enquires into its cause (Why is the Moon eclipsed?, Why does a vine shed its leaves?) or essence (What is god?, What is a human being?).

Let us consider the vine and its leaves. Enquiry begins from the observation that a vine sheds its leaves. According to Aristotle, this can be known—in one sense of the word—through perception and our natural capacity to generalise. This initial piece of knowledge or cognition then leads us to investigate why exactly it is that a vine regularly sheds leaves: What in the very nature of the vine causes it to shed leaves? Vines and fig-trees, as opposed to pines and firs, might also have been observed to be broad-leaved and further experience of trees might have led one to generalise that other broad-leaved trees also shed their leaves. These observations and generalisations then suggest the hypothesis that there perhaps is an explanatory connection between a tree being broad-leaved and it shedding leaves. But without cognition of why it is so, this is just a conjecture. If we then find out that in broad-leaved trees sap coagulates in the stem, this suggests that the nutrients are no longer properly transmitted to the leaves and they die. (For the example, see *An. Post.* 2.16, 98b5–15; 2.17, 99a25–30.) Knowing this might also involve knowledge of some general facts about nutrition and growth.

In the *Nicomachean Ethics* Aristotle compares enquiry to a Greek stadium (1.4, 1095b1–4). The starting points of enquiry correspond to the line from which the runners start the race. They run in one direction until a turning point is

reached. From the turning point the race proceeds to the end, which is on the same line as the starting point but at a different spot. As opposed to a modern stadium in which the track is elliptically circular, the route of the runners on an ancient Greek stadium resembles the symbol ⊃, the turning point lying at the apex. Aristotle also adds that such a conception of the starting points for knowledge was already introduced by Plato and that Plato was correct in this respect (1095a30–33). In the example just given, the starting point would correspond to the observation that vines shed their leaves. Enquiry into the cause of this phenomenon would then take one further along the route to the more general fact that the vine is a broad-leaved tree or plant and that other broad-leaved trees (or plants) also shed their leaves. But what is the cause of this more general phenomenon? When, in Aristotle's example, one then finds out that sap coagulates in the stem and that the leaf dies, the turning point is reached: the real principles have been found. The return corresponds to explaining the vine's shedding by reference to the general fact that in broad-leaved trees, sap coagulates in the leaf and causes shedding.[19]

3.2   *Proofs and Justification?*

From the point of view of modern epistemology, the example might seem to correspond to having some beliefs about vines and their leaves, and these beliefs then gain support or justification in a larger framework of beliefs. From this perspective, our belief that vines shed their leaves would in the example be justified on the basis of the premises (a vine is a broad-leaved tree or plant in which sap coagulates in the stem), and the premises would be directly justified by intellectual cognition about them. As indicated, I do not think that this is a correct description of Aristotle's procedure. To begin with, in Aristotle the difference between the observation that vines shed their leaves and the knowledge that they shed their leaves because they are broad-leaved and sap coagulates in the stem is not the difference between a mere true belief and a justified one. Aristotle's procedure cannot be correctly captured by claiming that the process that takes us to the general explanatory facts that function as the premises of a proof is that we gather some evidence or search our belief structure and gather what, in that structure, might warrant our belief that vines shed their leaves.[20]

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19   Such explanations can also be expressed in what Aristotle calls "epistemonic syllogisms" (*sullogismos epistêmonikos*), valid arguments or inferences that produce knowledge in the proper sense. For the construction of these syllogisms, see, e.g., Tuominen (2007: 73–75).

20   On this point I also agree with Gerson (2009).

Aristotle's distinguishing criterion between knowledge and belief in the *Posterior Analytics* is whether their objects (the *epistêton* and the *doxaston* respectively) can be otherwise or not. In this case, the initial piece of knowledge, i.e., that vines shed their leaves would not be a suitable object of belief, since, from Aristotle's perspective, it cannot be otherwise: if a vine did not shed its leaves, it would not be a vine. Thus the vine's shedding is a genuine object of knowledge (*epistêton*) as opposed to an object of belief (*doxaston*). When making the distinction Aristotle allows that, in a way, knowledge and belief can concern the same thing. For example, he seems to say that the vine can be both an object of knowledge and one of belief. However, this does not entail that the vine's shedding could be an object of belief—let alone that the initial propositional attitude that we have to a vine's shedding at the beginning of an enquiry is belief.

Rather, Aristotle's distinction suggests that a person might have beliefs and knowledge about the same thing but perhaps not of the same fact. For example, person *a* might believe that a vine grows in her garden, and this would be a true belief if *a* really grows a vine in her garden. However, this would not be an object of *epistêmê* (*epistêton*) since it can be otherwise, if *a* tears down the vine for instance. The vine's shedding is not, according to Aristotle, similarly dependent on contingent circumstance and is thus not an object of belief but one of knowledge.[21] This example further illustrates the point already made that the factor that Aristotle is looking for when analysing an enquiry is not justification: he is not trying to identify the missing link between knowledge and belief. As Gerson also points out (2009: 70), Aristotle does not analyse knowledge without qualification as justified true belief.

When discussing the process through which we come to know the explanation for a vine shedding its leaves, for a lunar eclipse or for the planets' non-twinkling—other examples that Aristotle uses in the *Posterior Analytics*—his question is simply what kind of *facts* do we need to know in order to know the conclusion or the explained phenomenon in the proper sense. It is not on Aristotle's agenda to ask *how we know that we know* (or cognise) that a vine sheds its leaves, or that a lunar eclipse is caused by the Earth being placed

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21   According to Gerson (2009: 69–70), belief can concern necessary things, if the person having such beliefs at the same time has the false belief that "the identity is an accidental one" (p. 70); in his example the relevant identity is that of the species man. I agree that the same thing can be an object of belief and knowledge, as the vine is in my example. However, I do *not* think that what Aristotle says in the relevant passage (*An. Post.* 1.33, 89a33–37) entitles us to infer that the vine's shedding can be an object of belief.

between the Sun and the Moon, thus preventing the Sun's light from fall-
ing on the Moon. According to Aristotle, what we need in order to turn our
observation or observational generalisation that a vine sheds its leaves or that
lunar eclipses occur into pieces of knowledge proper is knowledge or cogni-
tion of the facts that *cause* the phenomenon that we have grasped on the basis
of our perceptions. To put a similar point in yet another way, Aristotle gives no
indication that we would not be fully justified and fully correct in observing
that a vine sheds its leaves or that lunar eclipses occur *even without knowing the
cause*. However, we would not know the things in the unqualified sense since
knowledge proper requires knowledge or cognition of real causes, of facts that
explain the observation, and knowledge or cognition of the causes or explana-
tions being non-contingent.

4   Starting Points for Knowledge in Aristotle

4.1   *The Development of Reason*

As already indicated, Aristotle only returns to the question of how the starting
points or principles[22] of knowledge in the proper sense come to be known in
the final chapter of the *Posterior Analytics* (2.19). In that chapter, Aristotle first
argues that we do not have innate knowledge of the principles since it would
be out of place (*atopon*, 99b26) to claim that we have cognition that is more
accurate (*akribesteros*, 99b27) than unqualified knowledge without noticing
that we have it.[23] Nor is it possible to have infinitely many cognitive capaci-
ties that form a series of increasing accuracy (cf. 99b33–4). Rather, Aristotle
claims, we human beings have a certain cognitive capacity that we share with
all other animals, namely perception. Perception is an innate capacity for mak-
ing distinctions (*dunamis sumphutos kritikê*, 99b35), which allows us to have
cognition (*gnôsis*) of what we perceive. Some animals only have perceptual

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22   I use the translation "starting point" for *arkhê* instead of "principle." Perhaps the most
      important reason for this is the following: "principle," it seems to me, too easily fixes our
      minds on some propositional claims or basic logical principles. Whereas, in a sense, the
      individual premises of proofs are starting points for Aristotle, they are not the only ones.
      For example, in *An. Post.* 2.19, Aristotle allows the simple universal notions "animal of this
      kind" and "animal" (100b2–3).

23   In his comments on the chapter, Jonathan Barnes (1993: 261) points out that, rather than
      claiming that we do not notice the knowledge we ourselves have, Aristotle is making the
      sensible point that adults can notice that others, e.g., children, do not have such accurate
      knowledge. Aristotle may perhaps mean this, but I am not sure that the reading makes the
      best sense of what Aristotle is saying in the context.

cognition but none of the higher cognitive states: memory and experience, *epistêmê* and *nous*. Others, including human beings but also many non-human species, also have memory, and such animals are capable of retaining memories of what they have perceived. Through repeated observations some animals develop experience and even reason (*logos*, 100a2) from their memory traces, while others lack this capacity.[24] Aristotle then goes on to recapitulate what he has just said: many perceptions give rise to memory, memory to experience and a universal that comes to rest in the soul. This universal is a starting point (*arkhê*) for knowledge. After that, Aristotle provides an obscure simile (100a12–15) of soldiers withdrawing from a battlefield. He concedes that this is not a very illuminating explanation and promises to explain the same thing once again,[25] but—to say the least—the second formulation (100a15–b5) is not crystal clear either.

From the perspective of modern epistemology, it would seem natural to suppose that at the end of the chapter Aristotle addresses the question of how the truth of the principles can be ensured and the truthful cognition of them guaranteed. However, in the relevant section (100b5–17), Aristotle simply states that it is our intellect (*nous*) that enables us to grasp the principles, since it is the only cognitive disposition that is "truer" (*alêthesteros*) or more accurate (*akribesteros*) than *epistêmê*. With this comparative claim he might mean that intellect concerns truths that are prior in the order of things (see below 4.2), i.e., the facts that explain the conclusions.[26]

Before approaching Aristotle's account from a more general perspective, let us consider more closely his description of how reason is developed from repeated observations through memory and his comparison between human cognitive development and a retreating army. The former description reads as follows:

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24   It is somewhat surprising that Aristotle does not, in this context, explicitly exclude the possibility that other animals than human beings could be rational. Elsewhere, most notably in the *De anima*, he clearly excludes non-human animals from the scope of rationality.

25   There has been some discussion about whether Aristotle's *palai* "recently" or "quite some time ago" refers to what he has just said, or whether he refers to some earlier chapter. Some scholars have taken it in the latter sense (e.g., Waitz, referring to 2.13, 97b7–25; C.D.C. Reeve, in personal communication, referring to 1.2, 72a35–b4). I rather agree with Ross (1949: 677), Barnes (1993: 265) and Brunschwig (1981: 84–86) that Aristotle refers to the account he has just given. The same reading is also found in Pseudo-Philoponus (*in An. Post.* 437.8–9).

26   See also Lesher (1973: 63–64), who suggests that "truer" here means "more in possession of the principles."

B. Thus from perception arises memory, as we state, and from memories of often having observed the same thing, arises experience (*empeiria*);[27] for many memories make up a single experience. From experience or from the whole universal that has settled in our soul—from the one besides the many, which is the same in all the instances—arises the starting point (*arkhê*) of art (*tekhnê*) and knowledge (*epistêmê*). If it is concerned with coming to be, it is the starting point of art, if with being (*to on*), of knowledge. (100a3–8)

In this passage, Aristotle claims that the starting point for knowledge arises from "the whole universal (*to katholou*) that has settled in our soul—from the one besides the many, which is the same in all the instances [of that very universal]." He has mentioned universality (being *katholou*) in the requirements he gives for the premises of scientific proofs in Book 1, and in that context he seems to refer to universal statements such as "the vines shed their leaves" and "all planets are non-twinkling." However, in this context it would seem more natural to take Aristotle to refer to universal notions rather than propositions. This reading is suggested by his formulation "the one besides the many, which is the same in all the instances" and further confirmed by the only examples that occur in *Posterior Analytics* 2.19. Aristotle only mentions "human being" and "animal"—and he mentions them separately without connecting them into the propositional statement that a human being is an animal. If Aristotle is just referring to such simple general notions, what is the explanatory power of his account? If he claims that the mere capacity to entertain universal notions gives rise to the starting points for knowledge and art, what has he in fact explained?

4.2 *Which Starting Points?*

One possible response would be that Aristotle is giving an explanation of the acquisition of the starting points for knowledge in two directions. In several works, he distinguishes between priority for us and priority in nature (see, *An. Post.* 1.2, 71b33–72a5; *Prior Analytics* 2.23, 68b35–37; *Topics* 6.4, 141b3ff.; *Physics* 1.1; *Metaphysics* 7.3, 1029b3–12; *Nicomachean Ethics* 1.4, 1095a30–b5 illustrated by the stadium simile explained above in 3.1). In order for us to start scientific enquiry (or any serious enquiry for that matter), we—need to be able to operate with universal notions and, as Aristotle makes clear, these are ultimately acquired from perception, our most elementary cognitive capacity that is

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27   This sequence bears a close resemblance to an account that Plato rejects in the *Phaedo* (96c).

common to all other animals as well. Only this, Aristotle points out, prevents the regress of more advanced cognitive capacities that otherwise seems to threaten. Thus what is prior to us and what allows us to initiate enquiry is a simple type of generalisation, a cognitive process that occurs when we acquire universal notions such as "human being" and "animal." Having acquired them allows us to formulate the most basic questions Aristotle claims to be central in enquiry. If we have the notion of a human being and that of an animal, we can ask, "Is a human being (necessarily) an animal?" More exciting scientific questions are created by less familiar cases: Are dolphins fish? Why does noise occur in the clouds in thunder? Why do lunar eclipses take place? Why does a vine shed its leaves?[28]

Such starting points of enquiry need to be distinguished from those that function as the premises of scientific proofs, the naturally prior explanatory facts that need to meet the strict requirements Aristotle lays out in Book 1 Chapters 2–6 (mentioned in 3.2 above). Therefore, when he now makes the claim that the starting points for knowledge arise from whole universals that have settled in our soul, he might very well mean that research begins from mastering general notions, i.e., grasping things on a general level, and one then needs to find out what these things really are and why they are what they are. If this is how we should understand Aristotle's example, then the passage does not say anything specific about how we come to know the premises of scientific proofs.

However, already in late antiquity when the commentators on his works were explaining Aristotle's example, they tended to understand the reference to universals as a reference to universal claims or propositions. For example, in the commentary on *Posterior Analytics* Book 2 printed in the *Commentaria in Aristotelem Graeca*[29] after Philoponus' commentary on Book 1, but most probably not written by the historical Philoponus, the author of the commentary (whom I shall call "Pseudo-Philoponus") explains this process as follows. We see that human individuals, Socrates and Plato, purify their bile by drinking hellebore. From these observations, experience arises, and experience is explained as being "a certain sort of cognition (*gnôsis*) concerning the power (*dunamis*) of a certain thing" (Pseudo-Philoponus *in An. Post.* 435.20–1). This power is then described as the power of purifying or emptying the bile (432.24). According to Pseudo-Philoponus, experience differs from having a universal settled in one's soul in the following respect. When I have the universal,

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28 Cf. the research questions Aristotle lays out in *An. Post.* 2.1.
29 Volume XIII 3, ed., Wallies 1909. The same example occurs in Themistius' paraphrase of *Posterior Analytics* 2.19 (63.20–23, ed. Wallies 1900).

I know that "hellebore is such that it purifies the bile, *and that it is not other-wise*" (435.26). He thus indicates that a settled universal is such that it is not going to change, and that I know or cognise (in the sense of *gnôsis*, 435.25) that it is not. This would in fact connect Aristotle's brief account of our coming to know the starting points for knowledge with the requirement we saw above: that knowledge proper (*epistêmê*) can only be of things or facts that cannot be otherwise.

It is possible that Aristotle meant to say all this in his brief account but left it unarticulated. However, even if we took the brief reference in the elaborated, propositional sense explained by Pseudo-Philoponus, we would need to conclude that the account does not amount to a description of how the proper, explanatory starting points as premises of scientific proofs become known. A universal statement like "all hellebore is purifying," even with cognition of its necessity, does not rank among the explanatory and immediate premises that Aristotle takes to be primary in the order of nature. This is because the statement does not say anything about *why* all hellebore is purifying. Therefore, Pseudo-Philoponus' example is on a par with the claim that the vine sheds its leaves—with the important specification we cognise that it is not otherwise. As we have seen, such claims in Aristotle function as starting points of enquiry into why the vines shed their leaves and why hellebore is purifying. Only the claims that provide the explanation can even propose to count as real premises: they express the reason for the fact that occurs in the conclusion of a scientific proof.

4.3   *"The Soul is Such That It is Capable of Undergoing This"*

Aristotle then goes on to explain in more detail how cognitive dispositions concerning starting points for knowledge arise in us:

> C. Therefore, the dispositions (*hexeis*) do not belong to us as determined; nor do they arise from other cognitively higher dispositions; they arise from perception, as in a battle, when a retreat takes place, after one soldier has stopped the others do, until the process arrives at a starting point. The soul is such that it is capable of undergoing this (*hê de psukhê huparkhei toiautê ousa hoia dunasthai paskhein touto*). (100a8–14)

There are two main lines of interpretation with respect to this passage. First, it can be taken to refer to the idea that soldiers proceed on the battlefield in some kind of order, say a *phalanx* as the classical Athenians did. When the withdrawal starts, this order is temporarily lost but then regained, and this is what happens when the retreat "arrives at a starting point." The second possibility

is that the acquisition of the starting points for knowledge begins from the kind of chaos that occurs with soldiers in rout. This chaotic situation, however, ends with the acquisition of a starting point, and this is the intended meaning of the analogy. I have previously argued for the first interpretation,[30] which also agrees with how the late ancient commentators understood Aristotle's example. However, my general argument here is not dependent on accepting this reading.

The important point of the analogy is that when explaining the acquisition of starting points for knowledge Aristotle does not even raise the question of how we know that we have acquired the starting points. Despite some obscurity in the details, it is perfectly clear that Aristotle's account is a description of a cognitive process that leads to the state in which a starting point has been acquired. I shall argue below in Section 5 that the account is not merely descriptive in the sense of not containing a normative aspect at all. However, the normative aspect in Aristotle's account is not related to certainty or to establishing the existence of the starting point for knowledge and our knowledge or cognition of them. The crux of Aristotle's explanation is that "the soul is such that it is capable of undergoing this" (100a13–14), and it is hard to imagine that Aristotle would have supposed that this claim would convince any sceptic of the existence of such cognition. His account is an account of *how* the starting points of knowledge are acquired, not an anti-sceptical argument *that* they are acquired.

4.4   *Acquiring General Notions, Grasping the Premises*

As mentioned above, Aristotle is not content with the description he has given and points out that it needs to be restated (100a14–15). Unfortunately, the restatement is not very clear either:

> D. When the first similar (*adiaphoron*)[31] [object] has come to rest, there will be a first universal in the soul (for even though particulars are perceived, perception is about the general, for instance of a human being not of a human being Callias); we remain in these until those which are

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30   Tuominen (2010) challenged by Lesher (2010).

31   Themistius and Pseudo-Philoponus are unanimous that *adiaphoron* (non-different) here refers to similar things. Similarity can occur on many levels: individuals like Callias and Aristo (Themistius *in An. Post.* 64.12), or Socrates and Plato (Pseudo-Philoponus *in An. Post.* 437.11–12) are similar in kind; a human being and a lion (Themistius) or a horse (Pseudo-Philoponus) are similar in genus; Themistius even mentions that plants and animals are similar because they are substances (*ousia*) (Themistius *in An. Post.* 64.13).

universal (*ta katholou*) and without parts (*ta amerê*) come to a halt, for instance an animal of this sort and animal [in general], and similarly in that case. It is now clear that we cognise (*gnôrizein*) the first [principles] through induction because perception also implants the universal in us in this way. (100a14–b5)

We saw above that Aristotle's account of the acquisition of starting points for knowledge from perception is a description of how universals in the sense of general notions are acquired. It seems more difficult to analyse it as an account of the acquisition of the real premises of proofs. In the quoted passage (D) Aristotle finally seems to connect the two. Even though, somewhat frustratingly, he does not give any details, he seems to be saying that both the general notions such as "human being" and "animal" and the premises of proofs become known in a similar process that he here calls "induction" (*epagôgê*). Aristotle has several accounts of induction as a form of argument or inference (*An. Pr.* 2.23 and *Topics* 1.12 to mention the most important ones) but in this passage the elements that are typical to induction as inference or argument are completely absent.[32] Aristotle does not refer to structures of premises and conclusions at all. Therefore, it is somewhat unlikely that he would refer to induction in quite the same sense as when he talks about induction as a form of argument.

Rather, the essential point of the passage is that there is something common in acquiring universals as general notions and the process of coming to know the explanatory premises of scientific proofs. As the acquisition of general notions ("human being," "animal") needs to involve some—even if unarticulated—cognition of what is essential and common to human beings or animals in general, coming to know what explains a vine's shedding of leaves involves understanding what is essential to a vine and how this explains the way in which the plant reacts to circumstances. In both cases the relevant cognition is also related to what is general or common to many different things, be they individuals or kinds of things. The common element of generalisation probably explains why Aristotle talks about induction here even though no actual inferences are spelled out. Aristotle thus seems to be saying that, in some sense, coming to know the premises of scientific proofs is a process similar to the one through which we acquire general notions.

It needs to be repeated that even this new description does not say anything about *how we know* that we have acquired the notion, or, from a psychological

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32   This is why I do not agree with Bolton's claim (1991) that *Posterior Analytics* 2.19 would be a description of methodology.

perspective, how the perception of an individual (e.g., Callias) without the universal in mind differs from the perception of the individual Callias with the universal in mind.[33] Supposedly, being able to conceptualise the perception as one of "Callias the human being" already involves the universal. Yet whether having the universal in the relevant sense requires grasping Callias as a human being, who *cannot be otherwise* without ceasing to be Callias a human being in the proper sense—as Pseudo-Philoponus suggests in the case of hellebore—is not specified.

4.5   *Intellect is Always True*

In the very brief final section that Aristotle confines to the question of which cognitive disposition grasps the starting points, he simply asserts that intellect (*nous*) is always true—and truer than *epistêmê* (100b5–16). Again, Aristotle does not ask *whether* we can know the starting points but *how* we come to know them, and, more specifically, he takes this question as being a question of which cognitive disposition is suited for grasping the principles. As previously stated, neither does Aristotle attempt to block sceptical doubts, nor does he focus on analysing the inner distinguishing qualities of *nous*. Rather, he states that since *nous* is the only cognitive disposition that is always true and even truer (*alêthesteros*) than *epistêmê*, it must be the one that concerns the premises of proofs. When he considers the examples of premises of proofs, his emphasis is all the time on the question of what is the *real explanation* of the phenomenon, e.g., of the lunar eclipse. No reference is made to the question of whether the cognitive state bears an internal distinguishing mark on the basis of which we can tell whether our conception of the explanation is correct or not.

For many, the last chapter of the *Posterior Analytics* tends to be disappointing. Myles Burnyeat, for example, has characterised it as "perfunctory in the extreme."[34] This is no wonder if we expect Aristotle to respond to the kind of questions that are central in modern epistemology—and that were central in Hellenistic epistemology due to the sceptical challenges to Stoic and Epicurean theories of the criterion of truth.[35] As I have argued above, in this context Aristotle does not even raise the question of how the cognitive states in which we grasp the starting points differ from an internal perspective from states in which we merely think that we grasp them. Rather, Aristotle's distinction of

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33   For the problem, see also Salmieri (2010).

34   Burnyeat 1981: 133.

35   For a general account of the differences between the Hellenistic and Platonic-Aristotelian accounts of knowledge, see Tuominen (2007: 220–222).

the various cognitive capacities is based on the nature of the external *objects* of those states, not on the internal qualities of the states.

5   Concluding Remarks

5.1   *Descriptive and Normative Aspects in Aristotle's Theory*

Let us now return to the question of the relation between normative and descriptive elements in epistemology—and in Aristotle's account of knowledge in the *Posterior Analytics*. I have argued that Aristotle's account is, in a sense, descriptive but it also contains a strong normative element that is very different from the one we encounter in much of modern epistemology. As Cartesian epistemology wishes to secure an indubitable basis for all knowledge, its most important normative element is related to certainty and immunity to sceptical doubt. As we have seen, Aristotle makes no moves to secure his account against a sceptic when describing the way in which we come to grasp starting points for knowledge in *Posterior Analytics* 2.19. Further, he gives no indication that we should suppose his discussion of perceptual errors in the *Metaphysics* or the *De anima* to offer such foundations.

As Aristotle's account of intellect as the disposition grasping the principles suggests, the source of normativity in Aristotle's account is derived from the close connection between certain cognitive capacities, dispositions or states and truth, supreme truth or explanatory power. Intellect or *nous* as a cognitive disposition develops through perceptions and experience and it is always true. It is a higher disposition than *epistêmê* because its objects are better known in nature than the objects of *epistêmê*. The latter concerns the conclusions of scientific proofs and the conclusions are secondary in nature to the premises because the premises express the causes of the facts that occur in the conclusions. In addition to intellect's specific relation to truth, Aristotle account is also normative in the sense that having such intellectual comprehension of causes and essences is undoubtedly a state that we should strive for. In fact, for Aristotle, *epistêmê* and *nous* are intellectual virtues (*Nicomachean Ethics* 6.3, 1139b12–13; 16–17).

However, even though Aristotle thus makes a connection between being supremely knowledgeable and being intellectually virtuous, his theory is rather different from the modern versions of virtue epistemology. For example, "conventional" versions of virtue epistemology such as Sosa's (1991, e.g., p. 277) base their analyses on standard epistemological problems, such as the Gettier problems showing that justification and truth are not sufficient to turn a belief into knowledge. Even the version that has been introduced as a modification of Aristotelian virtue ethics, "neo-Aristotelian virtue epistemology" (Zagzebski

1996), has a very different focus when compared to Aristotle's account. Most importantly, even though modern virtue epistemology underlines the qualities of the epistemic agent, it is very close to the standard analysis of knowledge as justified belief. For example, according to Zagzebski, "a justified belief is what a person who is motivated by intellectual virtue, and who has the understanding of his cognitive situation a virtuous person would have, might believe in like circumstances" (Zagzebski 1996; for Gettier problems, see pp. 285–6).[36] By contrast to this kind of an analysis, for Aristotle, *epistêmê* and *nous* are the highest cognitive dispositions, not because they exemplify epistemic excellence with respect to belief-forming practices but because they have a specific relation to external reality. They concern non-contingent general facts in their mutual connections in a network of causes and effects of explanations and *explananda*. Further, *epistêmê* and *nous* also grasp their objects correctly or truthfully.

Since Aristotle's approach to cognitive dispositions includes such a strong normative element, it also differs considerably from the naturalised epistemology of the 20th century. Even though Aristotle describes human cognitive functions and does so within the natural science of his time, his account is not neutral with respect to truth and reliability.[37] On the other hand, as Aristotle's approach and the normativity therein include a particular relation between the epistemic states and external reality, his theory might also be taken to resemble externalist epistemological theories such as Goldman's reliabilism. However, even these approaches tend to be tied to an approach of knowledge as justified belief. As Goldman himself has argued, this is exactly the perspective from which we can understand reliabilism on a par with other modern epistemological theories.

5.2   *What Would an Aristotelian Approach Have to Offer?*

What, then, is the lesson we can learn from Aristotle's account? It goes without saying that it would be impossible to return to an Aristotelian approach to the questions of knowledge. Sidestepping sceptical doubts in the way Aristotle does would not be appealing in the 21st century. However, I think there are important conclusions we can draw from Aristotle's account and that could perhaps refresh the contemporary epistemological discussion.

One very important difference between the standard forms of modern epistemology and Aristotle's account of knowledge is that, for Aristotle, an

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36   It is somewhat surprising that virtue epistemology accepts the standard analysis, because it is difficult to see how descriptions such as Zagzebski's could avoid the Gettier problems.

37   Gerson (2009: 11) makes a somewhat similar point by emphasising the link between Aristotle's account of knowledge and metaphysics.

epistemically virtuous person needs to be knowledgeable in a large bulk of knowledge involving generalisations and explanations concerning the world we live in and that we perceive with the senses. Such knowledge was in Aristotle's framework scientific, but today's scientific observation has become rather detached from the everyday perceptual reality of human individuals. For knowledge in Aristotle's sense, it is not sufficient that a person is diligent in forming opinions and conceptions. The essential point is that one grasps the principles on the basis of which, in various sciences, explanations are made and that one also possesses a considerable amount of knowledge concerning nature and the heavens. In this respect, his view is in a sharp contrast to those forms of today's alternative virtue epistemology (e.g., Roberts and Wood 2007) that suggest alternative approaches, pictures or maps of intellectual virtues derived even from the Scriptures.

For Aristotle, the essence of scientific enquiry lies in the human capacity to perceive and to generalise—and to look for and to find explanatory and essential relations between things. This viewpoint can be fruitful even if we reject his assumption that things have permanent natures that need to be grasped in scientific enquiry. Such capacities as that of distinguishing between what is relevant and what is not, or what is explanatory and what is not, are clearly relevant for knowledge acquisition, even though they do not play a prominent role in current epistemology and do not aim at securing any single belief or truth against the sceptic. In addition, Aristotle could be taken to suggest that an epistemically virtuous agent is not one who can reliably derive a justified belief concerning a particular fact in the external world but one who possesses theoretical understanding in various fields of enquiry. Further, even if we rejected his optimism concerning the human capacity to grasp the truth and the natural tendency to strive for knowing more, we might appreciate his position according to which the ultimate source of normativity in a theory of knowledge lies in the extent to which it involves comprehending and explaining the world around us.

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PART 2

Justice and Natural Rights

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Did Plato and Aristotle Recognize Human Rights?

Fred D. Miller, Jr.

Human rights feature prominently in modern political thought. The principle that all human beings possess "inalienable" or "imprescriptible" rights was endorsed in the American Declaration of Independence (1776), the French Declaration of the Rights of Man and of the Citizen (1789), and the United Nations' Universal Declaration of Human Rights (1948). Theories of natural rights were propounded by John Locke (1632–1704), Samuel Pufendorf (1632–1694), Thomas Hobbes (1588–1679), Hugo Grotius (1583–1645), and arguably by early modern scholastics including Fernando Vásquez (b. 1512), Domingo de Soto (1495–1560), and Francisco de Vitoria (1485–1546). There is a growing consensus that the natural rights tradition reaches back into the middle ages, perhaps as far as twelfth and thirteenth century canon lawyers.[1] Can we find this concept even earlier, in ancient Greek philosophers such as Plato and Aristotle? In order to answer such a question, it is necessary to be precise about the meaning of "rights."

A right may be defined quite generally as a rightful claim of one party against another, a claim justified on the basis of justice, law, or other norm. We may ask: Did the Greeks have anything corresponding to the concept expressed in modern languages by words such as "right," "Recht," "droit," "diritto," "derecho," etc.? But, even if the Greeks had such a concept, we can ask more precisely: Did the Greeks have a concept of individual subjective rights, that is of rights possessed by an individual which form a basis for a rightful claim against another? Further, did they have the concept of rights of persons, that is, rights which individuals have on account of their moral status as persons? Finally, did they possess the concept of human rights, that is, equal natural rights possessed by all human beings qua human beings?

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1 Jean Gerson (1363–1429) is credited with "the first rights theory" by Tuck 1979, ch. 1; William of Ockham (c. 1288–1348) by Villey (1964: 97–127); and the canon lawyers by Tierney (1997, ch. 2) and Reid (1991: 37–92). A. Brett (1997) examines the evolution of natural rights language in later scholastic thought.

1   "Rights" Locutions in Ancient Greek

An influential proponent of the view that the ancients had no concept of rights is Alasdair MacIntyre: "There is no expression in any ancient or medieval language correctly translated by our expression 'a right' until near the close of the Middle Ages: the concept lacks any means of expression in Hebrew, Greek, Latin or Arabic, classical or medieval, before about 1400, let alone in Old English, or in Japanese even as late as the mid-nineteenth century."[2] This is not, however, a mere lexicographical dispute. Whether or not the ancient Greeks and Romans had even a nascent concept of rights bears on how they viewed the legal and political standing of individuals. Examination of this question may thus contribute to a clearer comparison between ancient and modern political theory. It may also encourage fruitful speculation about what it means to possess a right and how rights claims are to be justified and applied.

Before embarking on this inquiry, however, it is necessary to confront an oft-noted fact: There is no single expression in ancient Greek corresponding to "a right." Modern Greek in contrast does have such a word: *dikaiôma*. Does the fact that the ancient Greeks had no single word for "right" prove that they lacked the notion? Some scholars invoke the lexical principle that speakers cannot recognize a concept unless they have a specific word for it. But this principle seems too strong: Although English has no synonym for the German word "Schadenfreude," English speakers all too readily understand what it means: enjoyment of another's misfortunes. This example shows that the absence of a word does not entail the absence of a concept. Can a similar point be made about rights?

A helpful framework for this investigation is provided by Wesley Hohfeld, who demonstrated that the word "right" is used ambiguously in modern legal argument. In an influential analysis, he distinguished four senses in which one person X might have "a right" against another person Y:

(1) X has a *claim* against Y to Y's doing A, in which case Y has a correlative duty to X to do A (e.g., the right to repayment of a debt).

(2) X has a *liberty* or *privilege* against Y to do A, in which case X has no duty to Y to forbear from doing A (e.g., the liberty to use one's own property).

(3) X has an *authority* or *power* against Y to do A, in which case Y is liable to X's doing A (e.g., the authority to prosecute someone).

(4) X has an *immunity* against Y to Y's doing A (e.g., immunity against being prosecuted).

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2   MacIntyre 1981: 67. For similar views, see Villey (1946: 201–271) and Tuck (1979, ch. 1).

I have argued in previous writings that the Greeks used distinct legal expressions corresponding to the different conceptions of rights distinguished by Hohfeld.[3]

Hohfeld	Greek
claim	*to dikaion*
liberty, privilege	*exeinai*
authority, power	*kurios*
immunity	*adeia, ateleia*

The use of these terms in Athenian law can be illustrated briefly from speeches of Demosthenes (384–322 B.C.). (1) He uses to *dikaion* for a "just claim" of one party against another, for example for his own just claims (*ta dikaia*) against his guardian Aphobus, whom Demosthenes sued for stealing his inheritance (27.1, 3; cf. 13.16). This usage clearly refers to a subjective right, because Demosthenes speaks of litigants as "*having* this just claim (*to dikaion*)" (44.29) and he contrasts "*our* just claims" with "the just claims *of others*" (3.27; cf. "*your* just claims," 24.3). A central principle of Demosthenes' democratic ideology is that every citizen shares in equal and just claims (*ta isa kai ta dikaia*, 21.67). For democratic justice requires impartiality to citizens of all social classes (21.183). (2) *Exeinai* is used in the sense of a "liberty" or "privilege." Demosthenes reports that "Solon made a law that one had the liberty (*exeinai*) to give his things [i.e., property] to whomever he wishes, if there were no legitimate children" (20.102). Demosthenes also uses the word in connection with property rights, to indicate that we are free to use our property as we wish. "Indeed, Callicles, if you have the liberty (*exesti*) to enclose your land, surely we also had the liberty to enclose ours. But if my father did you an injustice by enclosing his land, you also do me an injustice by enclosing yours" (55.29). The implication is that all owners are at liberty to erect walls around their property, provided they do no injustice to their neighbors. (3) *Kurios* in the sense of "authority" is used to distinguish masters from slaves: masters are *kurios* over slaves but not vice-versa; only a free man is *kurios* over himself (37.51, 47.14–15, 59.46). A guardian is the legal authority over an estate for a minor heir or widow (27.55). The adjective *kurios* (fem. *kuria*) also applies to laws (20.8, 34; 24.205), decrees (23.96),

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3   See Miller 2007: 102–109.

wills (36.34), and contracts (47.77, 59.46). (4) *Adeia* means "immunity," for example from punishment of debtors for failure to pay debts on time (24.103) and for safe conduct granted to foreign troops (23.159) or an actor on tour (5.6). *Ateleia* denotes "exemption," for example exemption from public service granted by the assembly (20.1–2, 24, 127).

Demosthenes provides convincing evidence that the ancient Greeks had at their disposal a panoply of legal terms corresponding to modern "rights" locutions, including what are now called "*subjective* rights," that is rights possessed by individual subjects, which form a basis for rightful claims against others. It remains a more controversial question, however, whether ancient Greek philosophers recognized what moderns call "rights of persons" or even "human rights." I now turn to the greatest of these philosophers: Plato and Aristotle.

2   Rights in Plato's *Republic*

Although Plato (*ca.* 429–347 B.C.) has been pilloried by Karl Popper as an "enemy of the open society,"[4] Gregory Vlastos argues that he was actually committed to individual rights. The central theme of Plato's *Republic* is justice, which Vlastos defines as "the disposition to govern one's conduct by respect for the rights of those whom that conduct affects."[5] This conception is expressed in what Vlastos calls "the Principle of Functional Reciprocity":

> All members of the polis have equal rights to those and only those benefits which are required for the optimal performance of their function in the polis.[6]

Though never made explicit in Plato's text, Vlastos argues that the principle is tacitly assumed throughout the *Republic* by the leading speaker, Socrates, starting with the first primitive community (called "Protopolis" by Vlastos). Drawn together by mutual need and lack of self-sufficiency, different individuals perform special jobs for which they have different natural talents: farmers, weavers, shoemakers, carpenters, or merchants (4.369–371e). Such specialization of labor illustrates a nascent idea of justice: "everyone must practice one of the

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4   See Popper 1962.

5   Vlastos 1977: 4–5; cf. Vlastos 1978, 172–210 (repr. 1995, 102–25.). The *Republic* had an alternate title, *On Justice*.

6   Vlastos 1978: 177.

occupations in the city-state for which he is naturally best suited" (cf. 4.433a).[7] When it is objected that Protopolis is a mere "city of pigs," Socrates argues that a more advanced city-state will require three specialized classes: guardians (or rulers), auxiliaries (or warriors), and producers (2.374a–e, 3.414b). In the ideal city-state (described as "Callipolis" at 7.527c) the rulers will be philosophers who must undergo a strict program of education and training. The Principle of Functional Reciprocity implies that the philosophers alone have the right to rule over the city-state, and to the associated benefits, e.g., publicly funded housing, meals, and salary. But the rulers' rights are limited: "none of them should possess any private property beyond what is wholly necessary"; hence, they have no right to own private land or houses or to handle gold, silver, or money generally, because this would only distract them from their true political vocation (4.416d–417b; 5.464b). Nor may the guardians interfere with the rights of the other citizens to practice their professions (4.433d).

Vlastos's claim that "all members of the polis have equal rights" is potentially misleading. It might suggest an egalitarian principle that "distributes a sort of equality to both equals and unequals alike," but Socrates emphatically rejects this principle, which he associates with extreme democracy and anarchy (8.558c). "Equal right" for Vlastos means simply that those who are equally qualified to do a job have an equal right to the wherewithal to perform it properly. This has radical implications, including what Vlastos calls "a ringing manifesto of equality between the sexes within the guardian class."[8] For, Socrates argues, "women born with the appropriate natures should share everything equally with men" (7.540c), including equal rights to education and vocational opportunity, marital rights, and legal and political rights. This proposal was remarkable, because women in ancient Athens were second-class citizens with inferior legal, political, and social status. Plato might even be called a "feminist," if this is defined as one who denies that equal rights can be denied or abridged on account of gender.[9]

The evidence presented by Vlastos establishes so far at most that Plato's *Republic* allows for *functional rights*, that is, rights which individuals possess based on their proper functions within the city-state. Even if it is conceded that these are rights, they are rights in only a special sense. Moderns think of a right as involving the freedom to decide among alternatives, but this cannot be what Plato has in mind. For example, the citizens of Callipolis are assigned to

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7 Translations of *Republic* are by G.M.A. Grube, rev. C.D.C. Reeve, in Cooper (1997), with occasional revisions.
8 Vlastos 1978: 112–113.
9 Vlastos 1989: 485, 276, 288–289; repr. in Vlastos 1995: 133–143.

jobs and compelled to do them; they are not free to choose their own profes-
sions. Each citizen has a duty as well as a right to carry out his function within
the city-state. Moreover, the citizens have the rights to benefits only if they can
do their job. For example, Socrates agrees that a doctor should not treat a man
who cannot live a normal life, "since such a person would be of no profit either
to himself or to the city" (3.407d–e).

Even if Plato has a theory of functional rights, these are far removed from
rights of persons, that is, rights which individuals possess as separate persons
and not as mere means to a further end. Some scholars (e.g. Julia Annas) object
that it is a misleading to speak of "rights" at all in explicating Plato, because his
arguments have a purely utilitarian foundation.[10] For example, when Socrates
argues for female guardians, he is not concerned about whether disenfranchised
women are miserable, but about whether the city-state is squandering half its
human resources. Again, he proposes that children be raised and educated in
common, because this will facilitate the production of future guardians, not
because the traditional nuclear family impedes the well-being of women.

This objection gains support by Socrates' injunction: "[I]n establishing our
city, we aren't aiming to make any one group outstandingly happy but to make
the whole city-state happy, as far as possible" (4.420b). Just as a sculptor should
try to make the statue as a whole as beautiful as possible even if this requires
making the parts such as the eyes less beautiful than they could be, the legisla-
tor should aim at the happiness of the city-state as a whole. Socrates also pre-
scribes that the guardians merge their self-interest and regard the same things
(including parents, children, and property) as "mine" (5.462a–466c). On the
basis of such passages, Karl Popper contends that all Plato cares about is the
city-state viewed as a kind of "super-individual" or "super-organism"; he could
care less about individual rights.[11]

Vlastos replies that this objection overlooks that Platonic justice entails *reci-
procity*.[12] In the ideal city-state the philosophers have a duty to serve as admin-
istrators of the city-state for fifteen years even if they would be less happy
during this term. The reason is that the aim of the law is "to spread happiness
throughout the city-state by bringing the citizens into harmony through per-
suasion and compulsion and making them share with each other (*allois*) the
benefits that each of them (*hekastoi*) can confer on the community" (7.519e).
This implies that the citizens have duties to each other as individuals and not
merely to an overarching social organism. Another passage states that the vir-
tue of wisdom involves "the knowledge of what is advantageous for each part

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10   See Annas 1976: 307–321; Schofield 2006: 227 and 247 n. 97.
11   Popper 1962: 169.
12   Vlastos 1977: 16.

and for the whole (*hekastôi te kai holôi*), which is the community of all three parts" (4.442c).[13]

This last passage seems unclear, however, on a crucial point. Is it always possible for the philosopher ruler to promote the interests of the whole community as well as the good of each of its parts? What if individual interests conflict with the good of the whole, must the latter take precedence? Should the interests of the individual be sacrificed? Or should we suppose that the real interests of the individuals somehow merge together so that there is no real conflict? That was suggested by the passage cited earlier in which every parent in the ideal city-state calls every child "my" child. The view of most commentators on the *Republic* is that, when push comes to shove, Plato is inclined to sacrifice the individual for the sake of whole.[14] Consequently, Vlastos's thesis that Plato recognizes the rights of persons have met with scepticism. The dominant view remains that Plato's principle of justice is about social duties and that it establishes at most functional rights rather than the rights of persons.[15]

3 Rights in Aristotle's *Politics*

In contrast with Plato, Aristotle (384–822 B.C.) is more widely recognized as an early champion of individual rights. Ernest Barker remarked, "Plato thinks of the individual as bound to do the *duty* to which he is called as an organ of the State: Aristotle thinks of the individual as deserving the right which he *ought* to enjoy in a society based on (proportionate) equality."[16] Similarly, Eduard Zeller observed, "In politics as in metaphysics the central point with Plato is the Universal, with Aristotle the Individual. The former demands that the whole should realize its ends without regard to the interests of individuals: the latter that it should be reared upon the satisfaction of all individual interests

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13   Although 4.442c deals with wisdom in an individual's soul, Socrates holds that the same virtues are found in the soul as in the city-state (435a–b).

14   Compare Plato's *Laws*: although the true political art aims at the common interest rather than individual interests, "it is advantageous for both the common and the private if the common rather than the private is well served (9.875a–b; cf. 10.903d)."

15   See Santas 2006: 91–103. Due to limited space it is not possible to discuss Plato's *Laws*, which describes a second-best approximation to the ideal constitution, in which the rule of law takes the place of philosopher-rulers. However, the *Laws* seems to agree with the *Republic* in subordinating individual interests to the common good: "I shall legislate entirely with a view to what is best for the whole city-state and family, and will justly assign what belongs to each individual to a lower rank" (*Laws* 11.923b).

16   Barker 1906: 235.

that have a true title to be regarded."[17] The following textual evidence indicates that individual rights indeed play a role in Aristotle's political theory.[18]

His theory is based on the fundamental principle that a constitution is just insofar as it is in a natural condition (*kata phusin*). The just claims or rights of citizens are based on distributive justice as follows. In a just distribution individuals receive shares of a common asset based on their merit or desert. This results in what Aristotle calls a "geometrical proportion," in the simplified case of two individuals:

$$\frac{\text{Merit of X}}{\text{Merit of Y}} = \frac{\text{Value of X's share}}{\text{Value of Y's share}}$$

A just distribution is thus a function assigning to each person in a particular share of the common asset.[19] As a result each person has a *just claim* or *right* to this share. This is so far a purely formal principle of justice. In practice Aristotle indicates that the merit of individuals should be compared on the basis of their contributions. For example, in a business venture, if *X* contributes only one mina (i.e., a hundred drachmas) to a business venture while *Y* contributes ninety-nine minas, *X* has a just claim to only one-hundredth of the net earnings, and *Y* could justly complain if *X* took half the earnings. The application of distributive justice to political offices is more controversial: "Everyone agrees that justice in distributions ought to be according to a sort of merit, yet everyone does not say that merit is the same thing; advocates of democracy say it is freedom, some advocates of oligarchy say it is wealth, and other good birth, and advocates of aristocracy say it is virtue" (*NE* 5.3.1131a25–9, cf. *Pol.* 3.9.1280a16–19). Aristotle thinks the aristocrats made a good case when they argue that virtuous persons make the most important contribution to the

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17   Zeller 1897: 224–226.

18   As demonstrated in Fred. D. Miller Jr. (1995) and (2003: 209–250), Aristotle uses the "rights" locutions mentioned in section 1. For example, he defines the citizen as "someone who has the liberty (*exousia*) to participate in deliberative or judicial office" (*Politics* 3.1.1275b18–19). Aristotle also mentions that citizens (as well as resident aliens in some places) share in just claims (*ta dikaia*) "in so far as they prosecute others in court or are judged there themselves" (*Politics* 3.1.1275a8–11). Compare 3.9.1280b10–11 which speaks of law as "a guarantor of just claims (*ta dikaia*) against one another." Finally, he speaks of political rivals as claiming a greater share of political just claims (*ta politika dikaia*) on the basis of their alleged superiority (3.12).

19   See Keyt 1991: 238–278.

political community, because he thinks the proper aim of a community should be to produce good people who are able to lead truly happy and noble lives (*Pol.* 3.9.1280b40–1281a8). Hence, virtuous persons have a naturally just claim or right to citizenship and political office.

Granted that Aristotle recognizes political rights in some sense, are they merely functional rights as in Plato, or are they rights of persons? Aristotle provides a clue to the answer with his own trenchant critique of Plato's *Republic*. For he disagrees fundamentally with Plato over how the good of the city-state as a whole should be understood. One view is *holistic*: The good of the whole city-state is distinct from, and superior to, the goods of its individual members. Another view is *individualistic*: The good of the whole city-state must include the well-being of the individual citizens.

It is noteworthy that Aristotle criticizes Plato's ideal for being excessively holistic. Against Plato's "hypothesis that it is best for the entire city-state to be one as far as possible," Aristotle objects that

> . . . as it becomes more one it will no longer be a city-state; for the city-state is with respect to its nature a sort of multitude, and if it becomes more one it will be a household instead of a city-state, and a human being instead of a household; for we would say that a household is more one than a city-state, and one [human being is more one] than a household; so that even if one could do this, it ought not to be done; for it would destroy the city-state. (*Pol.* 2.2.1261a16–22; cf. *Rep.* 4.422d1–4236, 5.462a9–b2)

Aristotle also criticizes the collectivistic aim of Plato's ideal regime:

> [H]e says that the lawgiver ought to make the city-state as a whole happy. But it is impossible for a whole to be happy unless most or all or some of its parts possess happiness. For being happy is not the same as [being] even; for the latter can belong to the whole, even if neither of its parts does, but being happy cannot. (*Pol.* 2.5.1264b15–24; cf. *Rep.* 4.419a1–421c6, 5.465e4–466a6)

In rejecting Plato's ideal, Aristotle assumes a comparatively weak necessary condition: The city-state is happy only if most or all or some members of the city-state are happy. This disjunctive requirement is satisfied even by deviant constitutions that promote only the advantage of the rulers (see 3.7.1279b30–1). But the first two disjuncts—"most or all"—suggest two different standards for the best constitution, corresponding to two competing theories of the common advantage (*to koinê sumpheron*), a concept which Aristotle equates with political or universal justice (3.12.1282b16–18; cf. 3.7.1279a28–3 and *NE* 5.1.1129b14–19, 8.9.1160a13–14):

> *The overall advantage* The city-state is happy only if most of the members
> are happy.
> *The mutual advantage* The city-state is happy only if each of the members
> are happy.

The *overall* advantage permits trade-offs, that is, sacrifices of the basic inter-
ests of some individuals in order to promote the advantage of others. Hence,
the overall advantage could not be deeply committed to the rights of individu-
als. The *mutual* advantage, however, reflects the individualistic requirement
that the happiness of *each* of the participants must be protected by political
institutions. Hence, only the mutual advantage interpretation implies that
individual persons have just claims or rights.

There is compelling evidence that Aristotle is committed to the mutual-
advantage interpretation of justice. First, he says that "the best constitution is
that order under which anyone whatsoever (*hostisoun*) might act in the best
way and live blessedly" (7.2.1324a23–5). This implies that no citizen will be
excluded from a happy life in the ideal regime. Later he distinguishes between
citizens and mere adjuncts such as slaves and vulgar workers (7.8.1328a21–5).
Whereas adjuncts merely perform necessary functions, the citizens are gen-
uine members of the city-state who partake of its end (1328a25–33, b4–5;
cf. 4.4.1291a24–8). When he says the city-state is "a community of similar per-
sons for the sake of the best possible life" (1328a35–6), he implies that *all* its
genuine members, i.e. citizens, partake in this end. This requirement is also
asserted in support of universal property rights: "a city-state should be called
happy not by viewing a part of it but by viewing *all* of the citizens" (1329a23–4).
He also proposes the distribution of two lots of land be distributed to each
citizen, one near the border and one near the city, to bring about "equality and
justice and unanimity regarding border wars" (7.10.1330a14–18). This implies
that all citizens have equal property rights.[20]

Furthermore, Aristotle lays down a principle to guide the founder of the
best regime:

> . . . a city-state is excellent due to the fact that the citizens who partake
> in the constitution are excellent; but in our case all the citizens partake
> in the constitution. We must therefore inquire as to how a man becomes
> excellent; for even if all the citizens could be excellent without each of
> the citizens [being excellent], the latter would be more choiceworthy; for
> "all" follows from "each." (7.13.1332a32–8)

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20   See Miller 2005, ch. 6.

Aristotle thus distinguishes between two principles which could guide the lawgiver:

> *All* the citizens (in a collective sense) should be excellent.
> *Each* citizen (as an individual) should be excellent.

"Each" is logically stronger than "all," because "each" entails, but is not entailed by, "all." For "all" is compatible with the overall advantage, that is, a state of affairs in which the interests of some citizens are sacrificed in order to advance the happiness of most of the citizens. "Each" requires the *mutual* advantage, that is, the promotion of the excellence of each and every citizen. It is noteworthy, then, that Aristotle describes the "each" principle as the more choiceworthy. This requirement rules out the holistic view that the city-state is excellent even if some of the citizens only "merge" their lives in the life of the city-state as a whole. Such a condition, in which some citizens bask in the reflected excellence of others, may be consistent with the weaker principle that *all* the citizens be virtuous (in a collective sense of "all"), but it does not meet Aristotle's more stringent requirement that *each* of the citizens attain excellence. Only a mutual-advantage theory of justice will satisfy this requirement. This stronger requirement clearly assumes that the happiness of the citizens is *compossible*—that is, that there are no deep, irremediable conflicts of interests among them—but this is precisely what distinguishes the best constitution from the inferior constitutions.

The thesis that Aristotle was committed to a theory of rights has met with various objections: First, John Cooper has objected that the theory of rights presupposes a far more radical form of individualism than Aristotle could not have accepted—namely, "what Hegel calls the 'principle of subjective freedom'— the idea that in possessing this power we have something of infinite worth in each of us individually."[21] Second, it is objected that Aristotle thinks of citizens as *deserving a share* to political offices rather than as *having a right* to them.[22] For if *X* has a right to *A* this cannot be because *X* done something to deserve *A*. As Richard Kraut observes that "no modern theorist holds that in order to retain the right to life one must use one's talents to benefit the community."[23] Finally, Julia Annas argues that Aristotle could not have been concerned with rights because his ideal regime contains slaves (7.10.1330a31–3). Farmers, craftsmen, and vulgar workers are disenfranchised because their occupations are inimical

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21   Cooper 1996: 863 (859–872).
22   Schofield 1996: 831–858.
23   Kraut 1996: 763, 755–774.

to the virtue and leisure required by citizens (7.9.1328b33–1329a2). Women are also treated as second-class citizens excluded from political offices, because their rational faculty lacks authority and their natural function is confined to the household (1.13.1260a13, 2.5.1264b4–6).

It is unclear, however, that these objections establish any more than that Aristotle would not see eye to eye with a typical present-day liberal rights theorist. John Locke's credentials as a bona fide rights theorist might be challenged on similar grounds. Locke derived natural rights not from a Hegelian principle of subjective freedom, but from the doctrine that human beings, as the creations and servants of God, "are his property, whose workmanship they are, made to last during his, not one another's pleasure."[24] Further, although many modern rights theorists draw a sharp distinction between what one is entitled to and what one deserves (for example, health care or a subsistence income), this distinction is a fairly recent development. Locke held that the right to private property arose from labor, which he viewed as the greatest source of value.[25] Finally, Locke regrettably held that slavery and the subordination of women are justified "by the right of nature."[26] It seems unreasonable to hold Aristotle to a standard that a paradigmatic rights theorist like Locke could not meet.

5   Conclusion

Undeniably there are deep differences between ancient and modern political views, but it is reasonable to recognize continuity as well as change in the history of political philosophy. Can the ultimate origins of rights be traced back to antiquity? This depends on how strictly rights are defined. If rights are understood as actionable claims of justice which individuals have against other members of the same community, it is hard to deny their presence in Greek law. The ancient Greeks possessed a sophisticated repertoire of locutions for legal relations which seem to correspond closely to modern rights locutions. There is also evidence that the Greeks recognized subjective rights, that is, claims belonging to an individual as a right holder.

It is much harder to establish that ancient political theorists recognized the *rights of persons*. Though this has been claimed on behalf of Plato, the dominant view remains that Plato recognized at most *functional* rights, that is, rights to carry out tasks necessary for the city-state as a whole. There is a

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24   Locke, *Second Treatise of Government*, ch. II.6.

25   Ibid., ch. V.40–43.

26   Ibid., ch. VII.85–86.

stronger case for rights of persons in the Aristotle's political theory, but, even in the case of Aristotle, an individual possesses such rights only as a contributing member of a city-state. In later years the Stoics went further in adopting a cosmopolitan view that all human beings are naturally akin and should therefore treat each other humanely and justly. But none of these ancient philosophers went so far as to espouse *human rights* in the modern sense, since for example they all accepted slavery.

It should not be forgotten, however, that the ancient Greeks made another important theoretical contribution: *natural law*. Plato discusses this idea in his *Laws* and Aristotle in his *Rhetoric*. The idea is also anticipated in Sophocles' *Antigone* in which the protagonist refuses to obey a tyrant's edict because it would violate a higher divine law. Aristotle says that Antigone is in effect appealing to the natural law, which Aristotle understands as grounded in human nature. In *Nicomachean Ethics* 5.7 Aristotle also speaks of natural justice, which he contrasts with conventional justice. An action may be just in the conventional sense but fail to be so in the natural sense. An action is just in the conventional sense if it conforms to rules which have been laid down by the authorities. This suggests that, if the action involves using force or coercion against an innocent person it is unjust in the natural sense even if it is sanctioned by legal convention. This idea is even more explicit in Demosthenes, who argues that nullifying someone's property rights is a violation of natural law: "Earth and gods! Is it not monstrous, and manifestly contrary to law—I don't mean only contrary to the written law but also contrary to the common [law] of all human beings—that I should not have the liberty (*exeinai*) to defend myself against a person who comes and takes my possessions with force as though I were an enemy?" (23.61; cf. 18.274)

It is noteworthy, therefore, that Aristotle mentions some theorists who argued that "all slavery is against nature" and merely based on convention. The critics offered the following syllogism: Any relation based on force rather than nature is unjust. Slavery is based on force rather than nature. Therefore, slavery is unjust (*Pol.* 1.3.1253b20–3, cf. 1.5.1254a17, 1255a3). Aristotle does not name these early abolitionists, but one of them was probably Alcidamus, a sophist in the fourth century B.C., who apparently condemned slavery on the basis of natural law in his *Messeniac Oration*. His argument was preserved by an anonymous medieval commentator: "God left everyone free; nature has made nobody a slave" (see Aristotle *Rhetoric* 1.13.1373b18, cf. *Politics* 1.5.1254a19). This sounds remarkably like Rousseau, who observed two thousand years later that "man is born free, and everywhere he is in chains" (*Social Contract*, I, ch. 1). The arguments of Alcidamus were echoed later on by the Roman jurists: Ulpian declared that everyone was born free by the natural law (Justinian, *Digest* I.1.3), Sabinus that "as far as concerns the natural law all men are equal" (L.17.32),

and Florentinus called slavery "against nature" (I.5.4; cf. I.3.12). However, "the jurists did not question the existence of the institution—most were slave-owners themselves."[27] The Romans did however make reforms to ameliorate slavery. For example, the emperor Antoninus Pius (reigned 161–80), who was a Stoic, instituted legal curbs on cruelty to slaves, making "a man who kills his own slave without good grounds liable to the same punishment as one who kills someone else's slave," and compelling cruel masters to sell their slaves (*Institutes* I.8.2). The Romans never abolished slavery, but these philosophical critiques of slavery helped, arguably, to pave the way for its eventual demise.

Let us conclude by recalling the three questions posed at the outset: First, did the Greeks have a legal concept corresponding to the modern concept of *subjective rights*? The answer is yes: The Greeks had a sophisticated repertoire of legal terms corresponding to the concepts of rights distinguished by modern legal theorists such as Wesley Hohfeld. Second, did Greek philosophers such as Plato and Aristotle recognize what we call *rights of persons*? Here I argued that it is easier to make the case for Aristotle than for Plato, because Aristotle thinks that a just constitution will protect the interests of each and every citizen. But it is hard to make this case even for Aristotle when we come to the third question: Did they recognize *human rights*? The answer seems to be clearly no, if we understand human rights as rights which every human being possesses equally in so far as they human beings. However, there is evidence from as early as Aristotle's time that some philosophers were already criticizing slavery as a violation of natural law which implies that all human beings are equal. These early critiques of slavery, though unfortunately rare, suggest that ancient Greek political theorists in at least some cases anticipated the modern theory of universal human rights.[28]

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CHAPTER 5

The Debate About Natural Rights in the Middle Ages: The Issue of Franciscan Poverty

Roberto Lambertini

Preliminary Remarks

For the few scholars who in recent years have been pouring so much energy into the study of the controversies concerning Franciscan poverty, it is encouraging to see the change that has been taking place in the last few decades in scholarly attitudes towards the debates about religious poverty. With the praiseworthy exception of some pioneers, some decades ago such debates were still regarded as monkish discussions that could win at most the bookish interest of scholars, such as erudite Franciscan friars, who for particular reasons (for example the ongoing competition among Minorite congregations) could perceive as relevant today what was already confined to the past. The literary outcome of those debates consisted of long, often repetitive, frankly dull treatises that for the most part deserved to lie unpublished in the manuscript departments of European libraries.

Luckily, the atmosphere has changed dramatically over the last few decades. Histories of medieval political thought, such as the volumes edited by James Burns[1] and Carlo Dolcini,[2] contain chapters devoted to poverty debates. In the field of the history of economic thought, although using very different methods, Giacomo Todeschini and Odd Langholm recognised the great importance of the Franciscan contribution, developing different explanations for the *prima facie* puzzling fact that an order founded on poverty should show such a keen interest in problems of wealth production and economic exchange.[3] Moreover, historians concerned with the idea and the language of natural rights have been showing a steadily growing awareness of the importance of poverty debates in their reconstructions of the late medieval world.[4] I will therefore look at some suggestions from the viewpoint of a historian of Franciscan poverty theory,

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1 Coleman 1988: 607–648.
2 Tabarroni 1999: 175–207.
3 Langholm 1992; Todeschini 2004.
4 Brett 1997; Tierney 1997.

highlighting the role that some scholars attribute to the debates in the development of the language of rights.

An Ongoing Debate

This aim, although admittedly limited, does not make my task any easier. This is due to the fact that scholars nowadays seem to agree on the relevance of poverty debates and yet that does not prevent them from disagreeing not only on the interpretation of single works or even passages, but sometimes on the very reasons for the relevance of the debate. In addition to that, there is today great difficulty in finding a shared definition of natural rights. As Brian Tierney has rightly pointed out, it is not easy to trace back the origins of something when we do not exactly know what we are seeking the origins of. In my opinion, Virpi Mäkinen's and Petter Korkman's decision to use the term "Rights discourse" in the title of the important book they edited is particularly appropriate.[5] Its Foucauldian flavour notwithstanding, it allows us to identify an object of investigation, without committing ourselves to the existence of one or more rights theories. This is not a matter of mere convenience, but reflects the fact that scholars are still engaged in what seems to be a work in progress although it is high time to see some fine monographs published on the subject. A good example of the vitality of the debate on such subjects can be seen in a book that did not enjoy a wide circulation in the Anglophone scholarly milieus, namely the monograph by Luca Parisoli (1999).[6] Building on articles previously published in several journals, Parisoli put forward what one could call a personal and original rehabilitation—so to speak—of Michel Villey's thesis, cast, however, in a different framework. Parisoli does not subscribe to the view that had so heavily influenced Villey's interpretation, i.e. that William of Ockham represents the final stage of the dissolution of Scholasticism,[7] whose harmony between faith and reason, between individual good and common good had

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5   Mäkinen & Korkman (eds.) 2006.

6   Parisoli 1999. In the following years Parisoli published further studies concerning the Franciscan tradition in legal and political thought. Among them were: *La philosophie norma- tive de Jean Duns Scot. Droit et politique du droit* (Parisoli 2001) and *La Summa fratris Alexandri e la nascita della filosofia politica francescana. Riflessioni dall'ontologia delle norma alla vita sociale* (Parisoli 2008).

7   On Villey, see e.g. Tierney 1988: 1–31; published also as Tierney 1997. Sylvain Piron has recently published an extremely critical assessment of Villey's contribution to the history of medieval political thought (Piron 2008).

been destroyed on the one hand by a nominalistic ontology that necessarily implies individualism and on the other hand by a voluntaristic theology that deprived late medieval culture of a belief in a rationally ordered universe. In a certain sense, Villey's position can be grouped together with those of other critics of modernity, such as Georges de Lagarde:[8] the crisis of the Western *Weltanschauung* began with the nominalistic and individualistic criticism of Aquinas' synthesis, which was able to assemble into a coherent unity both Aristotelian rationalism and Christian faith.

Building also on the basis of Paolo Grossi's contributions, Parisoli believes that Franciscan voluntarism is a persuasive alternative to Thomism and to the related theories of natural law. Once Villey's negative attitude towards Ockham and his philosophy is reversed, however, many tenets of Villey's reconstruction remain valid. In particular, the development that led from a pervasive idea of right as an objective dimension to the rise of the idea of subjective rights is described as a dramatic change of paradigm. The author of the rich and informed preface to the book, the law historian Andrea Padovani, shares this view.[9] In Villey's view, which strongly recalls George de Lagarde's opinion on the "naissance de l'ésprit laique," the influence of individualism was paramount, while Parisoli stresses much more the role played by the Franciscan conception of poverty and the theories developed in its defence. As Parisoli puts it, referring to the Franciscan crisis under John XXII, "in order to justify their denial to renounce what they thought was most noble for the sake of poverty, the Friars Minor found themselves obliged to overthrow some of the most important legal notions and bypass in this way the system of civil law that imposed rights on the individuals. For this reason they first cut the umbilical cord that connected natural law and human law, secondly they submitted right to the free choice of the will (or better they argued that right itself was brought about by the will of the subject) and finally, slowly but on solid theoretical ground, they let the idea of subjective right itself emerge."[10] In Parisoli's account, of course, Ockham becomes the culmination of a process that begins with the apology of Minorite poverty in which Peter John Olivi and John Duns Scotus were the most important figures.[11] Ockham, for the first time, develops the idea of subjective rights, in the sense that Parisoli sees in the *ius poli*, the right of heaven, the origin of rights that hold beyond and

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8   Lagarde 1956–1963; about Lagarde's see Dolcini 1983, and (second edition) 1988: 9–117, especially pp. 63–65.

9   Padovani 1999, especially pp. 18–21.

10   Parisoli 1999: 41 (my translation).

11   Ibid., pp. 243–249.

even against any given positive law, but can be renounced.[12] While the first part of Parisoli's claim can be shared by every reader not only of Ockham, but even of Nicholas III's *Exiit qui seminat*, the second claim is more problematic. Reading Parisoli more carefully, however, one discovers that he understands such "renounceability" in the sense that nobody can oblige a free subject to have recourse to such a right. On the contrary, every human authority must yield to *ius poli* rights if the subject freely vindicates his title to have recourse to them.[13] However, as interesting as it may sound, it seems difficult to me that this interpretation can be regarded as Ockham's position, particularly because it does not take into due consideration the role of the state of necessity that plays an important role in Ockham's account of the relationship between natural law and positive law, as Virpi Mäkinen has shown in her article.[14] It seems to me that *ius naturale* functions in Ockham's view as a device that temporarily suspends the validity of positive law, preventing its application from causing evils due to particular circumstances. The kind of right the Franciscan friar can renounce is the one defined in a given positive order; if freedom of having or not having recourse to it should be regarded as an essential feature of a subjective right, then in Ockham's account the result is that if a right is subjective, then it is not natural;[15] if a *facultas*, a *licentia*, or whatever, is natural, then it is not a right in its proper sense.

If Parisoli is critical of certain aspects of modernity, this certainly does not concern its forgetfulness of the Aristotelian lesson, as one can learn from the last pages of his book. In his opinion the difficulties of contemporary theories of natural rights depend on the circumstance that they are not grounded on the only will that can doubtlessly be regarded as superior to every positive law, that is divine will.[16] In fact, more recent approaches to this issue share the persuasion that debates on Franciscan poverty did play an important role

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12   Ibid., pp. 210–211.

13   Ibid., pp. 206–207.

14   Mäkinen 2006: 37–62, esp. pp. 50: "…Ockham assented to the secular criticism that a Franciscan friar had a right of using a thing, but *only* in extreme necessity. Apart from urgent situations, the Franciscans used things only by licence, not by right, in their ordinary daily lives."

15   See Ockham, Guillaume de 1963 "…ex dictamine ratione naturalis convincit quod expedit posse peccantibus quod etiam habeant potestatem appropriandi sibi, nisi aliqui eorum eadem potestate sponte se privent, ita quod nullus debet in principio cogi talem potestatem dimittere." This is probably the closest Ockham can come to the idea of an inalienable right (here *potestas*); as one can see, however, this is a positive right and can be renounced, although nobody can be compelled to renounce it.

16   Parisoli 1999: 274–275.

in its development. But this is not to say that there is a specific Franciscan theory of natural rights or that the medieval contribution to the rise of a theory of natural rights is exclusively a Franciscan business. Franciscans represent therefore only a chapter in a history that involves many contributors, no matter what their affiliation to a specific religious group or a school of thought may be. Brian Tierney maintained that the objective and the subjective idea of rights, far from being two opposing paradigms, whether they are chronologically ordered (as Villey seems to think) or are seen to coexist as aspects of conflicting theories of law (as Parisoli claims), can be regarded as two different ways of describing relationships in the legal world. Such different perspectives can even be present in the same authors, beginning with the canonists he knows probably better than any other student of these issues.[17] The awareness of this double possibility also emerges, however, much later in an author such as Marsilius of Padua, who is not a Franciscan and clearly does not belong to the so-called Thomistic trend of thought.[18] Moreover, Tierney shows that the identification of *ius* as *potestas*, which was often regarded as a typical feature of a "subjectivist" interpretation of rights, can also be found in authors that doubtless belong to the Thomist tradition, such as Hervaeus Natalis. For her part, Annabel Brett remarks that rights as *potestates* are often attributed by some authors, for example Ockham, to entities, such as animals, that are not regarded as free. She also argues that for the majority of medieval authors rights are possibilities of acting in accordance with the law, not so much as spaces for liberty—so to speak—granted by the law.[19]

An even more recent, plausible re-assessment of the role played by the discussion on Franciscan poverty is contained in Virpi Mäkinen's *Property Rights in the Late Medieval Discussion on Franciscan Poverty*.[20] As the title suggests, Mäkinen is convinced that we should not only investigate Franciscan theories about their own poverty, but the whole debate on the issue. The language concerning such issues developed in and along with the often polemical exchange of opinions between the different parts involved in the debate. Focusing only on Franciscan apologetic strategies can be misleading, because they belong to a wider context. Moreover, Mäkinen shows that if any terminology and concepts that resemble the contemporary way of dealing with individual rights

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17   Tierney 1997.

18   Ibid.: 108–118.

19   Brett (1997: 6) "Moreover, rights as *potestates* or *facultates* of an individual entity—including man—can be seen by these authors as operating in accordance with the law, not as being a liberty granted by the law."

20   Mäkinen 2001.

can be found it is in the late thirteenth-century adversaries of the Franciscan theory of perfection, such as Henry of Ghent and Godfrey of Fontaines,[21] rather than in the Franciscan authors themselves, whose works she investigates from Bonaventura to Bonagratia da Bergamo. Her awareness of the inevitability of casting Franciscan authors in the context of rights is also shown to be fruitful in her 2006 essay on the role of the state of extreme necessity in late medieval debates. Here she sees Ockham as forced to develop further Franciscan positions under the pressure of John XXII's full-scale attack contained in the Bull *Quia vir reprobus*.[22]

Janet Coleman, in comparing Dominican and neo-Augustinian approaches to natural law, has argued that in the latter approach (of which Henry of Ghent and James of Viterbo are representatives), there can actually be no rights, but only duties. Thus, from this neo-Augustinian point of view, there only exists the possibility of obeying commands that fulfil the function of preserving human beings from the dangerous consequences of their corrupt nature.[23] This raises the question whether it is possible that Henry of Ghent can be considered by one scholar to be a supporter of the idea of natural, individual, inalienable rights and by a different scholar be taken as a representative of a trend of thought that denies the existence of rights in their proper sense. In my opinion, this is a symptom of the hermeneutical difficulties lying before us in the attempt to trace back the idea of rights (that in our times is still very controversial) to a different conceptual "world." Expanding on this issue, however, would exceed not only my present purpose, but also my competence. I limit myself to remarking that although Coleman's conclusion seems to me grounded more on a penetrating doctrinal analysis than on a textual basis,[24] it is worth mentioning that even Coleman sees the Dominican tradition as closer to some aspects of a modern idea of individual rights than the opposed trend

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21   Ibid.: "Henry of Ghent and Godfrey of Fontaines gave, perhaps for the first time in the history of philosophy a formulation of an individual, natural right of subsistence as an inalienable right everyone has in an extreme need."

22   Mäkinen (2006: 58) "Where the earlier Franciscans spoke about objectively understood natural law, Ockham spoke of subjective rights, claiming that natural rights could not be renounced. In fact, Ockham was forced to develop the Franciscan ideas on poverty in the area of moral philosophy, since his opponent, Pope John XXII, turned the argument against the Franciscan ideal to the analysis of human acts."

23   Coleman 2006: 3–36, esp. pp. 21–22.

24   Possibly not by accident Coleman omits Franciscan texts that could probably fit only partially into this rather rigid scheme, because Franciscan theologians are said on the one hand to belong rather to the neo-Augustinian trend of thought, but on the other side are often at odds with Henry of Ghent.

of thought. Moreover, Jussi Varkemaa's interpretation of the development stresses the contribution of later authors, such as Jean Gerson and Conrad Summenhart, whose links to the Franciscan tradition are rather loose.[25]

From the point of view of what Italians call a "francescanista," the focus of research on Franciscan thought has moved over the years from Ockham being seen not so much as a Minorite, but as a Nominalist, as he was by Villey, to the Franciscan tradition, where Ockham can be seen as either a mere epigone, an innovator, or even the culmination of the Minorite order. This focus, however, moved further from the Franciscan tradition, to the debate about Franciscan poverty, its antecedents and consequences. Some scholars have even argued that some critics of the Franciscan theory of poverty come closer to the modern concept of subjective rights; such a development implicitly suggests that historians should leave aside such a search for origins and study different concepts that emerge in different periods, without any concern to establish whether or not they match one of the contemporary definitions of subjective rights. Being more faithful to the methods of the history of political languages, one should rather speak of studying the different meanings that related words such as *ius*, *dominium*, *potestas*, *facultas* can have in different works. As Annabel Brett puts it, one should not "look for the origins of an idea, but enquire after the specific languages of right available in late mediaeval discourse."[26]

One Example: Enrico del Carretto's Treatise on Franciscan Poverty

In order to avoid the risk that my survey could sound too abstract to those who are not familiar with the highly specialised texts containing discussions on *ius* and related terms, and even trivial to specialists, I find it useful to add an example of a Franciscan writer whose ideas on *ius* are of some additional interest because he wrote during the debate opened by Pope John XXII, but before the Pontiff decided against the Franciscan position. Stemming from a noble family settled between Northern Tuscany and Western Liguria, educated in the Bolognese Franciscan *studium* and in Paris in 1300, Enrico del Carretto was made Bishop of Lucca by Boniface the VIII. Compelled by his Ghibelline adversaries to abandon his diocese, he spent many years in Avignon, where he also served the cause of his Order against the Spiritual dissidents.[27] John XXII apparently held him in great esteem, since he asked for his written opinion

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25   Varkemaa 2006: 119–147.
26   Brett 1997: 6.
27   Meek 1988: 404–408 and Emili 2008: 157–173.

in some cases, and certainly about the issue of magic and idolatry, recently studied by Alain Boureau.[28] Enrico del Carretto must have written his treatise on the poverty of Christ, dedicated to the pope, around 1322–1323,[29] and there took a stance that would have been in conflict with the papal decision of 1323. Giving his opinion on the poverty of Christ and the Apostles, he maintains, together with the Franciscan tradition, that they were absolutely poor, in the sense that they did not own anything, neither as individuals nor as a community. As is well known, shortly afterwards (1323, but for Enrico posthumously) this position was condemned as heretical.

With Aristotle and Beyond Him

Interestingly enough for a treatise on Franciscan poverty, Enrico's *De statu dispensativo Christi* refers often to Aristotle's *Politics*. The Franciscan bishop is persuaded that the *Politics* contains the doctrine about the *civitas philosophorum*,[30] that is what philosophers could grasp about human nature by purely rational means. Therefore, the validity of their conclusions is limited by their ignorance of the difference between human nature in the state of innocence and its corruption after the Fall.[31] Obviously, Enrico's attention is captured by *Politics* Book 2, and in particular by Aristotle's critique of community of goods as advocated—according to the Stagirite—by Socrates and Plato. These passages are crucial also because in them Aristotle emphasizes the shortcomings of the community of goods that, on the contrary, was considered morally superior to private property in the Christian tradition.[32] Moreover, the Order of the Friars Minor was characterized by a peculiar version of community of goods,

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28   Boureau 2004a: 12–34; 2004b.

29   The treatise postdates John XXII's *Quia nonnumquam*, the papal bull that lifted the ban on discussions concerning Franciscan poverty and of course antedates the summer of 1323, when Enrico's successor in Pisa was appointed. In the last years, a team has been working on a critical edition of Enrico's treatise, thanks to a first transcription generously made available by F. Barnaba Hechic: Emili, Martorelli Vico, Lambertini 2003–2004: 347–352.

30   Henricus de Carretto, *Tractatus de statu dispensativo Christi et specialiter de paupertate eius et Apostolorum eius,* (1322–1323), ch. 18, ms. Città del Vaticano, B.A.V., Borghes. 294, fol. 7r: "Est autem sciendum quod regnum legis nature, quod est regnum et civitas philosophorum, de qua agitur libro Politicorum". In this passage, with the expression "law of nature" Enrico does not obviously refer to the state of Innocence, but rather to what is naturally known by human beings.

31   Henricus de Carretto, *Tractatus*, ch. 35, ms. cit., fol. 11v: "Aristoteles et philosophi nihil intellexerunt de fine caritatis supernaturali nec peccato originali, quia dictamen rationis ad hoc non pertingit".

32   See B. Töpfer, *Urzustand und Sündenfall in der mittelalterlichen Gesellschafts- und Staatstheorie*, Stuttgart, Hiersemann 1999, in part. pp. 59–92, 187–260.

namely that the brethren used goods that belonged neither to the individual friar (many religious orders shared this feature) nor to the whole community of the Order (this was peculiar to the Franciscans and highly controversial).[33] Enrico's stance on this issue is grounded on the distinction between State of Innocence and Fallen State: in sum, he thinks that Aristotle is right as far as human corrupted nature is concerned but wrong if we consider Socrates' opinion about humankind as it would have been according to God's plan. Although unable to grasp the supernatural dimensions of human nature, the philosophy of the Stagirite can still be useful to interpret the Fallen State.[34] The Franciscan bishop is not completely original in his reading of these passages of *Politics* Book 2. Henry of Ghent had devoted a famous question in his Fourth *Quodlibet* to this issue, arguing along the same lines that were later adopted by Enrico del Carretto.[35]

The master from Ghent did not limit himself to the conclusion that, given the present state of humankind, the *civitas* is ruled in the best way if one follows Aristotle. Besides remarking that in some points the Stagirite misunderstands Plato and misrepresents his position (in particular regarding the community of women), Henry had added that religious communities, thanks to divine grace, can approximate the perfection envisaged by Plato. This did not imply, however, his unqualified approval of the Franciscan theory of evangelical perfection; a later *quodlibet* of his shows this beyond any doubt.[36]

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33   See the perceptive survey of the issue in Mäkinen 2001: 44–94.

34   This is the case, for example, with some basic concepts of economics, cf. Henricus de Carretto, *Tractatus*, ch. 103, ms. cit., fol. 50v: "In ordine enim illarum rerum, scilicet divitiarum per se et per accidens, consideranda est necessitas hominis. Maior enim est necessitas in vivere, que fit per alimenta, quam sit necessitas secundum instrumenta: magis enim indiget homo alimentis quam vestimentis et domibus; item, magis indiget homo alimentis et predictis instrumentis quam pecunia, que est adinventa propter facilius et expeditius vivere, non autem propter vivere, ut dicitur *I Politicorum*". Cf. R. Lambertini 2011: 289–300.

35   Henry of Ghent, *Quodlibet* IV, q. 20, *Utrum bonum sit omnia esse communia in civitate*, 2011, pp. 322–335; Mäkinen 2001, as footnote 23, in part. pp. 115–119; M. Leone 2010: 193–214, in part. 193–200. About Henry of Ghent's *Quodlibeta* in general, P. Porro 2006: 171–231. Giles of Rome too discussed Aristotle's critique in his *De regimnine principum*—see my 1990: 277–325, in part. 313–316.

36   Henry of Ghent, *Quodlibet* VII, q. 29, *Utrum habere bona temporalia in communi diminuat de statu perfectionis* 1991, pp. 278–309, in part. p. 290, where Henry remarks that the Franciscan way of life depends on the decision taken by persons from outside the Order, willing to keep the property of the things used by the friars. In the absence of such willingness, this kind of religious life would be impossible, so that Franciscan religious perfection depends—almost paradoxically—on the choice of non-Franciscans.

Enrico del Carretto's strategy consists, on the contrary, in showing that, once Aristotle's authority is acknowledged in its proper field of application while at the same time recognizing its limits, it is possible to defend the Franciscan way of life both as legitimate and meritorious. Enrico's arguments are based on the key role he attributes to human will in social and political life. First of all, while recognizing with Aristotle that society has a natural origin, Enrico qualifies his acceptance of this principle with an "*aliqualiter*." Society is in some way natural, as Aristotle thinks, but it depends also on the consent of the individuals involved. As is well known, according to the Franciscan tradition (but also to the mainstream canon law account of the origins of *proprietas*) "mine" and "yours" depend on human law, while before the Fall, when no such law existed, there was common ownership of everything. Human law that originates from agreement is at the origin of the division of property owned by individuals but also limits the freedom of the owners with respect to the things owned because they have to use them according to virtue, nature and reason.[37] Therefore, as one can easily see—and as Annabel Brett has noticed more generally[38]—Enrico is not so much interested in establishing a "space of freedom" granted by the law, as in underlining that this power over things must be exercised according to it.

Exactly because the origin of positive law is voluntary, through voluntary adhesion to the Franciscan rule the friar can renounce his rights to the things he uses. In other words, the friar can renounce his will (this is said to be the most valuable present that he can give to God) so that he becomes, as it were, anthropologically incapable of *ius*.[39] This was obviously at that time a traditional move of Franciscan apologetics and had contributed to an awareness of

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37 Henricus de Carretto, *Tractatus* ch. 101, ms. cit., fol. 43v: "Ista enim lex civilis, considerans dominium ut est potestas in ipso domino, dicit dominum posse agere ad libitum, licet <non> debeat esse virtuti contrarium (quia dicit lex quod expedit ut quis re sua bene utatur), nec contra naturam vel rationem; considerat etiam in re ipsa proprietatem, quam dominus habet in eadem. Limitat autem ius civile dominium in ipso domino, ne contra rationem inutiliter et incerte bona sua disperdat, ut prodigus. Item, limitat usumfructum et usum, secundum determinatum tempus et determinatis condicionibus, ne proprietas inutilis domino fiat, secundum finem iuris civilis et gentium, quod omnia illa constituit ut dominia sint utilia et certa".

38 See above, endnote 22.

39 Henricus de Carretto, *Tractatus*, ms. cit., ch. 68, fol. 22v: "Ulterius sciendum quod dominium et ius rerum est in voluntate, sed usus est in actu extrinseco. Voluntas enim habet libertatis potestatem, quam primo dimittit religiosus propter Deum. Quod est summum in abdicatione, quia plus est dimittere se et dare se Deo quam sua; nichil enim magis est secundum hominem quam voluntas, que non solum dimittit sua, sed posse habere

the existence of both objective and subjective connotations of the term "*ius*." Therefore, it is not a coincidence that, in Enrico's text, one can find a detailed list of possible meanings of "*ius*."

> Moreover,[40] it needs to be borne in mind that "right" sometimes means reason and law, and its meaning encompasses divine and human law. These connotations are central in Henry's distinction 1 *Ius generale nomen est*;[41] and in Augustine's *Super Iohannem*, in distinction 8, *Quo iure*.[42]
>
> Sometimes, "right" is opposed to "*fas*," that is divine law. In this meaning, what is right is the principle of the division of property. That is why Augustine says, in the passage from *Super Iohannem* just referred to: "Do not say: What does the ruler have to do with me? One could ask "What do you have to do with possessions? For, property is possessed by the law of the rulers. Do not say 'possessions' because you have renounced human laws." (*Noli dicere: Quid mihi et regi? Quid tibi ergo et possessioni? Per iura regum possidentur possessiones. Noli dicere possessiones, quia iura renuntiasti humana.*)
>
> Sometimes, "right" means lordship itself, or what follows necessarily from it, as in 1 *Reg*. 8, where the right of kings is declared to the sons of Israel.

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quecumque: fit enim incapabilis omnis dominii et proprietatis et omnium que ad hec necesse est sequi".

40   My rendering into English is based on the following passage: Henricus de Carretto, *Tractatus*, ch 69, ms. cit., fol. 23r: "Ulterius sciendum quod ius aliquando dicitur ratio et lex, et est generale nomen ad legem divinam et humanam. Unde distinctione 1: *Ius generale nomen est*; et Augustinus, *Super Ioannem*, 8. *distinctione, Quo iure*. Aliquando vero ius distinguitur contra fas, quod est lex divina: hoc autem modo sumendo ius, sic est ratio divisionis dominiorum. Unde Augustinus, ibidem: *Noli dicere: Quid michi et regi? Quid tibi ergo et possessioni? Per iura regum possidentur possessiones. Noli dicere possessiones, quia iura renuntiasti humana*. Aliquando vero ius dicitur ipsum dominium, vel necessario ipsum consequens, ut 1 *Reg*. 8, ubi declaratur filiis lsrael ius regum. Aliquando vero dicitur ius ipsa res incorporea possessa, ut ius eligendi et presentandi, in cuius possessione aliquis est sine proprietate, *Extra, De causa possessionis, Cum Ecclesia*, et *De iure patronatus, Consultationibus*."

41   Henry refers here to Gratian's *Decretum*, 1 *pars*, d. 1, c. 2 *Ius generale*, see *Corpus iuris Canonici, 1*.

42   *Decretum*, 1, d. 8, ch, 1, ed. cit., coll. 12–13: this famous passage taken up by Augustine and inserted into the *Decretum* was quoted time and again in late medieval debates about the origin of property; see e.g. B. Töpfer 1999, in particular pp. 164–168; see also my "Jenseits des politischen Augustinismus," Lambertini 2010.

Sometimes, "right" means an incorporeal thing one possesses, such as the right of election or of presentation; one can possess such right without having any property: *Extra*, *De causa possessionis*, *Cum ecclesia* and *De iure patronatus, Consultationibus*.[43]

In the third entry, *ius* is defined as lordship (*dominium*); in another passage of the same work *dominium* is in turn defined as liberty or freedom (*libertas*) and as the power to use things freely (*potestas utendi rei libere*). Therefore, Enrico conceives of *ius* also in terms of a power.

In fact,[44] dominion over things is a liberty concerning things, and a liberty concerning persons or things excludes other people from them, or limits the access to those things or persons according to the will of the owner. By contrast, before the division of property, things were equally free for everyone to use according to their will, although not according to necessity. But human will participated in the divisions of dominion and property—whether this happened before or after wars does not make a difference—and through this consent they acted against natural equity.[45]

In yet another passage Enrico equates *ius* with *animus*, i.e., with will,[46] and, finally, the whole human law (*ius humanum*) is described as voluntary

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43   Enrico is referring here to the *Liber Extra*; more precisely the first passage, *Extra*, liber 2, tit. 12, c. 3, *Corpus iuris Canonici*, II, ed. cit, coll. 276–277 is taken from a letter by Innocent III concerning the right to elect the bishop; the second passage, *Extra*, liber 3, tit. 38, ed. cit., c. 19 is taken from a letter by Alexander III concerning the *ius patronatus* and the related right of presenting a cleric for benefice. In sum, he gives two examples of the kind of rights he is speaking about. About Henry's acquaintance with canon law, see Mario Conetti 2011: 193–253.

44   My rendering is based on the following text: Henricus de Carretto, *Tractatus*, ch. 35, ms. cit., fol. 11v: "Est enim dominium rerum libertas quedam circa res; libertas igitur sive in personis sive in rebus excludit alios, nisi in quantum placet domino. Sed ante divisionem erant res equaliter libere respectu omnium, secundum voluntatis potestatem, licet non secundum necessitatem. Sed voluntas hominum intervenit in divisione dominiorum et proprietatum, vel ante bella vel post, et in isto consensu preiudicaverunt equitati nature".

45   Enrico is echoing a famous canon of the *Decretum*, known also under its heading *Dilectissimis*; *Decretum*, c. XII, q. 1, ch. 2, ed. cit., col. 677: "… per iniquitatem alius dixit hoc esse suum …" and the Gloss on it. Cf. R. Weigand 1967: 307–36.

46   Henricus de Carretto, *Tractatus*, ch. 6, ms. Cit. fol. 3r: "… propter quod possessio est tentio per se vel alium, cum animo absolute volente rem habere. Qui animus vel voluntas dicitur ius, id est res incorporea sequens ius dominii vel bonam fidem".

(*voluntarium*) as opposed to necessary.[47] This entails the possibility of renouncing *ius*, and it is most probably precisely this possibility that fascinated scholars such as Paolo Grossi, who saw in this the freedom of the subject vis-à-vis the objects of his right.[48] One important difference, however, is that in most modern conceptions—if I am not mistaken—the subject can decide whether he or she makes use of a certain right (e.g., the right of pursuing happiness) or not, whereas in the Franciscan account the subject is free to renounce—when taking his vow—the right itself.[49] In such a renunciation, the friar leaves behind the world of voluntariness and chooses what from this point of view is necessity.[50] Such necessity is co-extensive with nature and in this sense the Franciscans regain a state of life that is prior to any juridical system with its obligations.

Increasing interest in the early history of the rights discourse has inspired many investigations into the writings on Franciscan poverty, in particular those dating back to the period of the great controversies concerning it, i.e., from the origins of the Order to the crisis under John XXII. There is a growing awareness among scholars of the fact that the more sources become available, the more difficult it becomes to reduce the whole debate to a single explanatory thesis—let alone to reconstruct a univocal relationship between those discussions and the modern theories of rights. The example of Enrico del Carretto shows that a defence of Franciscan poverty could coexist with the adoption of the Aristotelian political language. However, this is possible only in so far as one limits Aristotle's competence or authority regarding social and political phenomena to natural rational knowledge. Christian Revelation opens a new horizon according to which the "city of the philosophers" is only one solution belonging to a wider range of possible communities. Moreover, this theological point of view throws light on a deeper anthropological dimension, namely that, as far as worldly goods are concerned, philosophical reason is precluded from gaining any knowledge about them.[51] In particular, Enrico del Carretto

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47   Ibid., ch. 37, fol. 12r: "Tertio supponitur quod ius humanum circa bona privata et pro utilitate privata introductum, non est necessarium, sed voluntarium, sicut est ius circa meum et tuum".

48   P. Grossi 1987: 1–58.

49   Henricus de Carretto, *Tractatus*, ms. cit., ch. 68, fol. 22v: "fit enim incapabilis omnis dominii et proprietatis et omnium que ad hec necesse est sequi".

50   Ibid., ch. 73, fol. 24r: "Quare ratio mei et tui extra rationem necessitatis est, quia habet rationem voluntarii, quia voluntas et necessitas opponuntur". On this issue, see also A. Emili 2005: 149–208 & A. Emili 2012: 219–237.

51   Henricus de Carretto, *Tractatus*, ch. 22, ms. cit., f.7v: "Si enim philosophi intellexissent differentiam legis peccati et nature, aliquid dixissent de usu rerum".

maintains that the Franciscan rule makes it possible for us to attain a way of life similar to that of the prelapsarian state that is deprived of any positive right and at the same time free from juridical bounds.

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The Impact of Ancient Legal and Philosophical Ideas on the Late Medieval Rights Discourse

Virpi Mäkinen

1 Introduction

The question of when and where the rights doctrine originated is still controversial among modern scholars. To find its roots, do we search among the Greek philosophers (in the Stoics, Plato, Aristotle) or Roman legal tradition and Cicero, among the twelfth- and thirteenth-century canon and civil lawyers, in the voluntarist tradition of the fourteenth century, in the sixteenth- and seventeenth-century political thought of the Spanish neo-Scholastics, or in the seventeenth-century political thought of Protestants such as Hugo Grotius, Thomas Hobbes, Samuel Pufendorf, and John Locke? I argue that natural rights emerged in medieval rights discourse. But this begs underlying questions about whether the emergence of natural rights can be understood as a continuation or a revival of an earlier tradition (e.g. what is the relation between objectively and subjectively understood natural right(s) traditions?). Another question which is related to the previous one is whether there is a single unbroken rights tradition or are there separate traditions.

Concerning the first question—the relationship between natural law and natural rights doctrines—some scholars distinguish sharply between them, and regard them as incompatible,[1] whereas others see the idea of natural rights merely as a supplement to natural law, or even as a different way to express what is already implied by natural law.[2] With regard to the second question—whether there is a single unbroken rights tradition or separate traditions—some modern scholars see only one tradition. This grounds rights in Christian anthropology and maintains that human beings are rational God-created individuals worthy of humane treatment.[3] Others maintain two separate and parallel natural rights traditions, with radically different conceptions of humankind, society, and the state: one based on Christian anthropology and another on Enlightenment anthropology.

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1 See Strauss 1965; MacPherson 1962. Recently, a similar argument has been made by Samuel Moyn (2010).

2 See Maritain 1945; Finnis 1980; Tierney 1997.

3 See e.g. Tierney 1995: 252.

The latter tradition "posited a natural state of antagonism among individuals and a natural right to self-preservation from which other rights emerged."[4] Scholars in this tradition also consider that the earliest roots are seen in seventeenth-century thinkers, especially in the writings of Thomas Hobbes and John Locke, who broke decisively with the previous tradition.[5]

If we agree that natural rights "were not an invention of modern, liberal, political philosophy (Locke) and practice (the American and French Revolutions) but of medieval philosophy, theology and law" this poses "a serious challenge to the conceit of many scholars that 'rights talk' arose as one of the seventeenth-century innovations associated with modernity and/or capitalism"[6] but the ways in which natural, individual rights are discussed today is the outcome of a long legacy of theorising going back to the high Middle Ages, we have to ask, as Cary J. Nederman puts it, "whether, moreover, the way(s) in which medieval and early modern thinkers conceived of rights has any significant relation to more recent ideas of rights."[7]

Discussions concerning the meaning, differentiation, and development of "a right" in the history of political thought and among modern scholars show that we are dealing with an elusive concept.[8] The lack of precise definitions seems to be one of the most confusing elements in many modern studies concerning the ultimate origins of rights.[9]

A common opinion among modern scholars studying the emergence of rights is that the earliest notions of subjectively understood rights go at the earliest back to the legal and moral philosophical sources of the twelfth and thirteenth century.[10] Therefore, many scholars have stated that William of Ockham (c. 1285–1347/8) was one of the earliest to offer a full-fledged natural rights theory.[11] It consisted of two elements: the treatment of property rights and

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4   See Williams 2004: 47–59.

5   See Fortin 1996: 265–286; Lockwood O'Donovan 1997: 143–156.

6   Nederman 2012: 649.

7   Nederman 2012: 643.

8   See Martin 1993: 1. The lack of clarity in the use of the term "right" concerns also modern studies. See e.g. Rawls 1971; Finnis 1980; Waldron 1984.

9   John Lamont has interestingly described how Michel Villey's ideas on objective rights and subjective rights have created several misinterpretations. See Lamont 2009: 169–239. Moreover, in modern discussion, there is no consensus how a right is defined and theoretically grounded. See also the previous note.

10   Tuck 1974; McGrade 1988, Ch. 39; Tierney 1997; Brett, 1997; Kilcullen 2011; Mäkinen 2001. Cf. Coleman 2006: 3–36.

11   One of the first scholars to argue William of Ockham's dominant role in the history of natural rights was Michel Villey. See e.g. Villey (1975 [1968]) and his article (1979: 144–147). See also Brett 1997: 50–68; McGrade 2006: 63–94. Cf. Tierney 1988: 1–31.

of political rights, whereupon early modern scholars created their theories.[12] According to John Kilcullen, "the general architecture of natural rights" in political thought remained almost untouched after William of Ockham. Political theorists after him made only a few changes but rendered more sophisticated and systematic formulations on rights. Nevertheless, their contributions were important.[13] It should be noted, however, that medieval scholars did not create any *theories* of natural rights; they merely developed subjectively understood rights *language* with conceptual roots found in ancient legal and philosophical sources. Christianity and Western culture seems to be a fruitful ground for the seeds of natural rights. Brian Tierney has, accordingly, noticed that it would be hard to imagine a Confucian Hobbes or Locke.[14]

In this article, I am interested in the impact of ancient legal and philosophical notions, especially those of Aristotle and Aristotelianism in the medieval rights discourse. There has been much discussion on whether Greek political thought operated with the concept of a subjective right—understood in the sense of rights that belonged to each individual fully and completely. Some scholars, recently Fred Miller in this volume, have argued that ancient philosophers already operated with a concept of subjective right.[15] A more common opinion among scholars is that both Plato and Aristotle as well as Roman law[16] represented the so-called objective right tradition and that the objective sense of right was transmitted to the medieval discussion through the study of Aristotle's *Nicomachean Ethics* and Roman legal sources.[17] I will argue for this opinion, focusing on the question of how the medieval authors used and interpreted ancient legal and moral philosophical texts in their own account of right(s).[18] Thus the focus of this paper is not on the ancient texts themselves,

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12   For the latest analyses on Ockham's theories on property and natural rights, see Robinson 2012; Mäkinen 2012: 507–525.

13   Kilcullen 2009 and 2010: 31–62. See also Brett 1997; Witte 2006: 37.

14   Tierney 1997: 1.

15   Fred D. Miller, Jr. in chapter 4 above. See also Miller 1995. Other scholars who argued that ancient Greek and Roman thought operated with subjective rights notions are, e.g., Aubenque 1995: 17–28; Vlastos 1995: 104–125; Mitsis 1999: 153–177.

16   Some scholars argued that Roman law operates with the concept of subjective right, e.g. Pugliese 1953: 223–260; Honoré 2005. Many accept that although Roman law has an objective rather than a subjective notion of *ius*, the language hesitates on the brink of the subjective sense, e.g. Coing 1959.

17   See Villey 1975; McGrade 1996: 806–829; Tierney 1997; Brett 1997.

18   For the reception of Aristotle in the Middle Ages, see Marenbon (2007). Most of the original translations of Aristotle were compared directly with the Greek text accompanying the commentaries of Arabic philosophers. John Witte notes that the possible rights talk of medieval Muslim and Jewish scholars would provide valuable knowledge for the history

but on the use the medieval scholars made of them. By the late medieval period in particular, the Aristotelian approach to ethics and politics had become so dominant that there was something to be gained from citing Aristotle whenever possible, even in support of conclusions reached by a different route.[19] Besides Aristotle and Aristotelianism, there were also other important ancient philosophical schools that had influenced the subject, especially the Stoic and the Augustinian Neoplatonist philosophers.

2   Right as the Object of Justice

The central concept in the medieval rights discourse was the Latin word *ius*. There were different interpretations of what "a right" (*ius*) means and to what it refers. It was typical for the same author to give various kinds of definitions for the concept of *ius*. Other important terms in the history of right(s) were the Latin terms *dominium* and *potestas*. The conceptual background for all these concepts came from ancient legal texts. Thus, in their different conceptual definitions, medieval authors often referred to Roman law (often the lawyers were Gaius and Ulpian).

 The Roman law collection *Corpus iuris civilis* codified by Emperor Justinian I in the sixth century was known to the medieval world through its "rediscovery" in the late eleventh and twelfth centuries. The collection, which included four books (*Digesta, Institutiones, Codex*, and *Novellae*), was used not only as a source of legal matters but also of political, social, and economic matters. This was, of course, problematic for many reasons. The collection included texts from different periods, and therefore, the vocabulary was not uniform. The most important part of the codification for medieval scholars, the *Digest*, was compiled in the early 530s and consists of extracts from jurists, a few of which went back to the very end of the Republic and most of which were written between three and four centuries before their compilation.[20] Roman law also

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of rights since they had access to ancient Roman law texts which were "lost" (but not totally lost) in the West between the sixth century and the eleventh century. See Witte 2006: 35. This notion is perhaps too optimistic since shari'a law became soon the only permissible law in Arabic countries. However, studies looking for the possible influence of Islamic thought on Western legal tradition have suggested that there has been an impact at least on the conceptual level on international law (e.g. Boisard 1980: 429–50) and on common law (e.g. Badr 1978).

19   McGrade 1996.

20   This raises also the question of the authenticity of the sources. See Robinson 1997: 105. For the standard textbooks on Roman law used in this article, see Thomas 1976; Buckland 1966; Kaser 1955; 1959.

came to be known through the *Glossae ordinariae*, the official commentaries made by civil lawyers called the glossators.[21] These lawyers tried to understand and coordinate the compilation into a coherent juridical system. Academically, this function was realised in the form of glosses, which increased in length and sophistication towards the fourteenth century.[22]

In the *Digest* and *Institutes*, which represented classical Roman law (the first 250 years BC), the notion of *ius* was mainly understood as the object of justice. Jurist Gaius from the 9th century stated that "a right was that of justice (*ius est iustitia*)." He recognised justice or equity as necessarily the aim of law/right. Justinian opened the *Digest* with the statement that a right was derived from justice and in the beginning of the *Institutes*, he stated that "justice is the constant and permanent will that each should receive what is his due."[23] Celsus defined a right as the *ars boni et aequi*.[24] In classical Roman law, *ius* referred to the object of justice. There was some influence of Greek philosophy in such definitions. However, Greek influence on jurists was mainly because of their general culture rather than anything specific.[25] These Roman law definitions of a right took a specific significance in medieval definitions. However, they were often used together with other definitions of ancient philosophers.

In his primary definition of right (*ius*) in the *Summa theologiae*, Thomas Aquinas referred to Aristotle's *Nicomachean Ethics*, Bishop Isidore of Seville's (c. 560–636) *Etymologiae* as well as to classical Roman law.[26] Using the bishop's definition that "*ius* is so called because it is *iustum*" and the definition of classical Roman law that "justice is the constant and permanent will that each should receive what is his due (or right)," Aquinas is able to identify the Aristotelian "just thing" (*to dikaion*) with "right" and concluded that the right is the object of justice. In this way, Aquinas put the Aristotelian "right" into his own system of moral theology.[27] More particularly, in his primary definition,

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21   See Berman 1983. The most important commentaries were made by Azo and Accursius (d. 1263). For a good bibliography of the works of the civil lawyers, see Feenstra 1979.

22   There are only a few studies concerning the influence of glossators and post-glossators to subjectively understood rights language. See Canning 1987; Coing 1959; Kriechbaum 1996; Weigand 1967; Pennington 2003: 117–141.

23   Inst. 1.1pr.; D. 1.1.10pr.; Ulpian 1 reg.

24   D 1.1.1pr; Ulpian 1 inst.

25   Robinson 1997: 26–27.

26   Isidore of Seville 1911, v. 3. In fact, Isidore's definition was not his own but derived from Roman law.

27   Thomas Aquinas, *Summa theologiae*, 2a2ae, q. 57 and 58. For Aquinas' definition, see also Brett 1997: 89–97. Aristotle's definition, however, differed from the definition of Roman law in one sense. For Aristotle, the right thing was the right thing for a just man to do. In Roman law, the right belonged to the recipient of the action. It was *suum ius*, his right.

Aquinas defined "a right" as that act, forbearance, or other thing which was just.[28] Right was in this sense an action (*actus*). Aquinas described it as follows: "right or the just thing is a certain action which is equal in relation to another person according to a certain mode of equality."[29] For Aquinas, a right was what justice (*iustus*) required that a person do with regard to another (*ad alterum*) in a given situation. Therefore, right could also be called the obligation or duty of that person. Doing a right thing was not for Aquinas a matter of personal choice. "Right as what is just" was something that law or justice gave to an individual under the objectively understood law of nature. A right was the just portion due each person. Thus Aquinas's primary definition of right represented an objective right tradition.[30]

This was also Aristotle's idea in *Nicomachean Ethics* Book 5 when treating the term *dikaion*.[31] For Aristotle, the *phusei dikaion*, the "right by nature," was that at which justice aims and with which it deals. In his *Nicomachean Ethics* 5.7, Aristotle stated that the object of justice is *to dikaion*, which was translated into Latin as *iustum* or just thing. In this context, he divided the political "just thing" (i.e. a right) into natural (*physikon*) justice and legal/conventional (*nomikon*) justice. The former described that justice which always had the same force and the latter that justice which was originally juridically indifferent.[32] Aristotle considered here an important argument against the naturalness of justice by stating: "that which is by nature is unchangeable and has everywhere the same force (as fire burns both here and in Persia), while they see change in the things

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Aquinas was able to harmonise the difference by exploiting the language of due (*debere, debitum*). For him, the right thing was due *from* the just man *to* another citizen. Aquinas was, therefore, led to concede that the right thing might not always be an action but might sometimes be a *res*.

28   Thomas Aquinas, *Summa theologiae* 2a 2ae, q. 57, a. 1: "iustum dicitur aliquid, quasi habens rectitudinem iustitiae, ad quod terminatur actio iustitiae … et hoc quidem est ius." For Aquinas' doctrine of natural rights and natural law, see Finnis (1980: esp. pp. 134–136). I do not, however, agree with Finnis's claim (ibid., 136–137) that Aquinas clearly espouses the concept of "human rights" since he never used a term translatable as "human rights." There are also other scholars (often Catholic) who have located such a concept in Aquinas. See e.g. Maritain 1945.

29   *Summa theologiae* 2a 2ae, q. 57, a. 2 in corp. See also Brett 1997: 90–91.

30   For Aquinas's notion of objective right, see Brett 1997: 89–97; Tierney 1997; Syse 2007.

31   The Latin translation of the whole book by Robert Grosseteste became available between the years 1246 and 1247. The first medieval commentaries on it were written between 1248 and 1252 in the Latin West.

32   Aristotle, *Nicomachean Ethics* 5.7 (1134b18–1135a14). See also Brett 1997: 93.

recognized as just."[33] Therefore, justice could not be natural to Aristotle. He, nevertheless, stated that there was something which was just by nature, "yet all of it is changeable."[34] These notions seem to be confusing since part of political justice was natural, yet it could be changed like right-handedness (an example Aristotle himself gave in 1134b32–34): one who was by nature right-handed, yet could be trained to be ambidextrous.[35]

Aristotle discussed natural justice in other contexts as well. Syse has held all these nicely together in the following: man is by nature political; nature can be used as a standard to criticise and correct deviations in positive law and actual human behaviour; nature is a principle of change and movement. In the case of human life and human community, the goal (*telos*) of this movement is the happy life, which is characterised by self-sufficiency (*autarkeia*); political justice is the justice that regulates human behaviour in the *polis*. Part of this justice is natural, i.e. not subject to human decisions and agreement; natural justice is changeable. The fact that the just is not recognised to be the same everywhere and at all times is no argument against there being something which is right or just in nature.[36]

There are many interpretations of Aristotle's notion of "right by nature" and the problem of the "changeability" of natural justice. Some scholars argue that there is no natural law or right found in Aristotle or that the idea has only a critical function.[37] Some contemporary scholars assert that Aristotle did have the notion of natural law or right. Fred Miller argues for a biological perspective, meaning that nature is a "principle of change which is inherent in substances." According to him, we saw changes in natural justice because, as a dynamic, nature indicates change. Therefore, natural justice cannot be eternally fixed since otherwise it could not be natural. The fact that natural law is changeable is henceforth an expression of Aristotelian biology as applied in ethics.[38]

There is not necessarily a conflict between "changeability" and a "right by nature" in Aristotle. Therefore, it is possible to sum up—as Syse does—without

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33 Ibid. 1134b25–27. See also Syse 2007: 97.

34 Aristotle, *Nicomachean Ethics* 5.7 (1134b28–29).

35 Syse (2007: 97) gives examples from Aristotle's other works where he treated the right hand either as superior to the left or stronger than the left.

36 Syse 2007: 98.

37 See e.g. Gadamer 1989: 319–320; Ritter 1961: 15–16 where, however, he states that "the right by nature" is in Aristotle part of his philosophical discourse and in the tradition of actually existing societies. Therefore, it seems to be the "ground" against which civil laws and customs may be judged and adjusted.

38 David Keyt and Fred D. Miller, Jr. (eds.), *A Companion to Aristotle's Politics*, Blackwell, Oxford 1991: 289. For Miller's position in the discussion, see also Syse 2007: 99.

holding Aristotle to be a natural-law thinker in the medieval sense that there is, in some sense, a consistent teaching of "right by nature" or "natural justice" in Aristotle.[39] Aristotle can be said "to present the groundwork for a non-static natural-law theory, even though he never develops any explicit theory of natural *law* as such."[40]

After defining "a right," Aquinas considered the question of what is justice. As noted above, in the Aristotelian definition justice was "that whereby men are operative of just things" and thus the right thing is the right thing for a just man to do, whereas Roman law's definition of justice as "the constant and perpetual will of rendering to each his right" maintained that the right belongs to the recipient of the action.[41] In his own definition of justice, Aquinas tried again to harmonise the Aristotelian and legal definitions using the language of due (*debere, debitum*) and interpreting *iustum* as *debitum*. For Aquinas, the right thing is due *from* the just man *to* another citizen. According to this kind of interpretation, the right thing may not always be an action but may sometimes be a *res* (*ipsam rem iustam*). It should be noted that for Aquinas, the theoretically important sense of justice remained that of a "just action."[42]

Following Aristotle, Aquinas divided "a right" between that which is natural (*ius naturale*) and that which is conventional (*ius positivum*).[43] Pointing out that the just thing is always toward others (*ad alterum*), Aquinas described right as "the right thing" between free and equal persons. A natural right is, therefore, the just action which presents itself to such free and equal (i.e. political) beings out of the nature of the thing.[44]

Among modern scholars Thomas Aquinas has been largely treated as "*the* exponent of a medieval philosophical outlook," and therefore, "objective right has been taken as part of the high medieval achievement of synthesizing classical and Christian heritages into rationalist philosophies of universal order."[45] Mainly because of this there has been "the fallacy, widespread among modern jurists and philosophers who are not medieval specialists, that if an idea is not found in Aquinas it is not a medieval idea at all."[46] As Brian Tierney has noted,

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39   Syse 2007: 103.

40   Ibid., 109.

41   This difference is explained by Brett 1997: 92.

42   Thomas Aquinas, *Summa theologiae*, 2a 2ae, q. 58, a. 11, in corp. See also Brett 1997: 92.

43   For Aristotle's division between the natural (*phusikon*) and conventional (*nomikon*) "just thing," see *Nichomachean Ethics* Book 5 (1134b18–21).

44   Brett 1997: 92–93.

45   Brett 1997: 3.

46   Tierney 1989: 616.

Aquinas did also use the word in a subjective sense in several phrases, such as *ius dominii*,[47] *ius possidendi*,[48] and *ius praelationis*,[49] in his *Summa theologiae*. This shows that he knew the common practice of his time but not that he in any sense represented or developed a subjective idea of rights.[50]

Objective right was typical for the Thomist tradition in the thirteenth and fourteenth centuries. However, also the non-Thomist tradition of commentary on the *Nicomachean Ethics* concerned a right as the object of justice. This shows Aristotle's crucial impact on the objective right tradition.[51] One central figure of this tradition was the Franciscan theologian Gerard Odo (also known as Guiral Ot). For him justice was (logically) prior to right. In order to argue for this, he stated five components of the notion *ius*, which were the command of the legislator, the thing due from the subject, a written text, the work enjoined, and due. According to Odo, "*ius* necessarily presupposes a legislator."[52] John Buridan also started his definition of *ius* from the Aristotelian idea of justice. He pointed out the elucidation of the term *iustum* as follows: "Let us declare summarily that *ius, iustum, lex, iustitia* and *iustificatio* are different. *Ius* is the command or ordination of the *dominus* concerning his subjects and those things which can fall under the power of the subjects." Buridan equated *ius* with *dominium* in the sense of *superioritas*. In this sense, he spoke of a right as a command (*preceptum*) rather than a law (*lex*).[53]

Justice was for Buridan a habit of the will. He differentiated between two kinds of justice: the justice of the *dominus* and the justice of subjects. The former mode of justice was prior to right and the right thing whereas the latter mode of justice was merely an obligation: "by right, that is, by the precept of *dominus*, the subjects are obliged to the just thing." In this sense Buridan followed the interpretation of Aquinas and Odo.[54]

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47   See *Summa theologiae* 2a 2ae, q. 62, a. 1.

48   Ibid., q. 66, a. 5.

49   Ibid., q. 69, a. 1.

50   Tierney 1997: 23.

51   For the non-Thomist tradition of commentary on the *NE*, see Brett 1997: 97–102.

52   Brett 1997: 97–99.

53   Ibid.: 99–102.

54   References and translation in Brett 1997: 101.

3   Right as a Law

Medieval scholars defined a right (*ius*) also as a law (*lex*), as Odo's definition
showed. In this sense they usually supposed that law and legislation give both
meaning and content to rights. In other words, a right was a kind of function
of law. Right as a law was understood as the command (*preceptum*) of the leg-
islator, as Buridan's definition showed. According to this interpretation, a right
could equally well be interpreted as authority, obligation, or punishment. The
Italian physician and theologian Marsilius of Padua understood *ius* in its first
meaning as "the same as law (*lex*), divine or human […]."[55] For the German
theologian Conrad Summenhart, one sense of *ius* was the same as law (*lex*),
as when we say that the precepts of God are *ius divinum* and the statutes of
emperors are *ius civile* […].[56]

Medieval scholars proposed that natural law (*ius naturale*) was known in
the *recta ratio* without divine revelation. This interpretation was based both on
rational nature (the Aristotelian tradition) and universal ethics (the Stoic tradi-
tion). Only human beings were able to follow natural moral law in accordance
with their reason and free will. Therefore, *ius naturale* concerned only rational
creatures, not animals. Some scholars, however, also proposed *ius naturale* for
animals. We will discuss more these kinds of arguments later on.

Jean Gerson stated the following in his definition of *ius*: "right is an imme-
diate faculty or power pertaining to a thing according to the dictate of right
reason (*recta ratio*). And thus the entire and final resolution of our subject
ends at the dictate of right reason."[57] For Gerson, right reason was the central
elucidation of law, and therefore, individual rights were consequent upon the
law that governs individuals.[58] Gerson had derived this emphasis merely from
Stoicism.[59]

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55   Marsilius of Padua, *Defensor pacis*, 2.12.6, 10: "[dominium] significant stricte sumptum
potestatem principalem vendicandi rem aliquam […] que siquidem ius alicuius dici-
tur, quoniam iuri primo modo dicto conformis." Translation in Brett 2005, 252–254. See
expanded version of the first definition at ibid., 1.12.3, 64.

56   Summenhart, *De contractibus licitis atque illicitis* 1.1, 1.

57   Jean Gerson, *De vita spirituali animae*, vol. 3, 141: "jus est facultas seu potestas propinqua
conveniens alicui secundum dictamen rectae rationis. Itaque et finalis resolutio materiae
nostrae ad dictamen rectae rationis terminator." Translation in Brett 1997: 81.

58   For more on Gerson's notion of individual rights, see Brett 1997: 81–87.

59   Tierney (1997: 53–54) places Gerson's theory of rights in the tradition of the twelfth-
century canonists, inspired by the humanist Renaissance of that century. Cf. Brett (1997:
83–84), who sees difficulties in Tierney's argument and argues that Gerson's source was
Ockham, but went far beyond Ockham in his elaboration of the fundamental nature of a

For Stoics, nature was the source of a definite set of rules and norms, of a legal code. They believed that natural right/law (*ius naturale*) was the expression of divine reason, which pervaded the world and made human law one of its aspects. Cicero (106–43 B.C.E.)[60] spoke about God-given, eternal, and absolute natural law (which has nothing to do with the natural right of the Sophists, or of Plato and Aristotle) as follows:

> The true law, is the law of reason, in accordance with nature known to all, unchangeable and imperishable, it should call men to their duties by its precepts and deter them from wrongdoing with its prohibitions [...] nor need we look for anyone to clarify or interpret it; nor will it be one law in Rome and a different one in Athens, nor otherwise tomorrow than it is today; but one and the same law, eternal and unchangeable will bind all people and all ages; and God, its designer, expounder and enacter, will be the sole and universal and governor of all things.[61]

Cicero rationalised Roman law, claiming that many of its central principles could be traced back to universal rational norms. The Stoic "common notions" through which human beings partook of universal reason and became aware of its dictates were psychologised. To do so, Cicero used the Stoic concept of "common notions," concepts or conceptions that are common to all human beings, at least in principle. Like the Stoics, he seemed to suppose that these notions include some basic principles of justice and morality. This was an important aspect for the later development of subjective rights.[62] The Greek notion *orthos logos* (right reason), which united natural necessity with the laws of reason was turned into the *recta ratio* of common sense, which has become the supreme source of law.[63]

Cicero pointed out that a right originated from nature (*natura initium ius*).[64] Nature commanded by a moral precept which ordered human beings to obey the sovereign *logos* that united human beings and the world. In humans, it

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right. When Ockham combined the language of right with that of power understood in its Aristotelian sense as a potential for action, he did not make the connection with being.

60   Cicero himself was not a Stoic but reports Stoic views and was in many cases influenced by them.

61   Cicero, *De Republica* III, 22.

62   Douzinas 2000: 49.

63   Bloch 1986.

64   Cicero, *De inventione* II, 22.65.

acted like the artist's fire;[65] it begot and sculpted the body and made it cohere by assembling its components (*logos spermatikos*).[66] In Cicero's thought, nature was onthologised and spiritualised: it became the creative spirit or life—a principle which in its pure state was God, while in a human being it resided in the soul. The soul, for Cicero *vis innata*, was an internal force which united humans with the divine *logos* and made them discern the law of nature, which they were bound to observe.[67]

Natural rights (*ius naturale*) became a matter of introspection and revelation and led to an abstract morality of precepts.[68] The most important aspects in Stoicism, and especially in Cicero's view, was that law/right was derived from human nature, i.e. from human reason: the Greek *dikaion* and the Roman *ius* became identified with a set of laws, a system of rational rules.[69] Consequences were also important: law's ontological dimension promoted ideas of human dignity and social equality—the law as reason that begot the world pushed towards an, admittedly abstract, fraternity of all humankind. In this latter aspect, the Stoic natural law remained, as Costas Douzinas states, "one of the most honorable chapters in the history of ideas and is linked with the later theories of natural and human rights."[70]

4   *Dominium* Rights

One important tradition in the development of subjectively understood natural rights was *dominium* rights. It was based on the equivalence between the notions of *ius* and *dominium*.[71] The origins of the equivalence are based on the interpretation of Roman law. The *Corpus iuris civilis*, however, did not contain any uniform definition of these terms because the legal terminology itself developed between the classical and the post-classical period. This caused dif-

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65   Cicero *De natura deorum academica*, II, 22.57.

66   Ibid. II.11.29; II.22.58.

67   Douzinas 2000: 51.

68   Op. cit.

69   Douzinas 2000: 52.

70   Douzinas 2000: 53.

71   For the importance of the equivalence between *dominium* and *ius* in the development of natural rights, see Brett 1997; Tierney 1997; Mäkinen 2001; J. Varkemaa 2012; Van Duffel 2010: 63–91. It is not wholly correct to state, however, as Tuck (1979: 25–28) does, that the equivalence between *dominium* and *ius* was a central root in the development of natural rights because through such equivalence the medieval scholars began to see a right as being more active.

ficulties for medieval authors who were interpreting Roman legal sources. In the classical period, lawyers used the notion of *dominium* when referring to power and the right to a thing. In the *Digest*, for example, lawyers treated *dominium* as an indivisible notion. In post-classical texts, the distinction between *dominium* and *iura* became obscure.

The background for the equivalence was partly connected to the development of property rights and the long-lasting dispute over Franciscan poverty.[72] The Franciscan poverty dispute in the mid-thirteenth century was an important historical event at a time when theologians, philosophers, and lawyers were discussing questions concerning the "ontology of rights." The early Franciscans before Ockham argued that the basis of their doctrine of poverty was that they were able to give up all *dominium* (understood as equivalent with *iura*) and live without any rights both as individuals as well as a community, because *dominium* was only a relation of control over things. Their opponents maintained that human agency was not possible without *dominium* (again understood as equivalent with *ius*), since one should have at least *ius utendi*, "a right to use," which was a basic juridical attribute justifying personal activity.[73]

The basic terminological elements of the poverty controversy is seen in the definitions of rights made during or after it. This is evident, for example, in Marsilius of Padua's second definition of right, which goes as follows:

> [R]ight is predicated of every human act, power, or acquired disposition that issues from an imperative of the human mind, be it internal or external, immanent or transitive upon some external thing or an aspect of it […] in conformity with rights so-called in its first signification.[74]

Further, Marsilius pointed out that something is someone's right when he wills or handles a particular thing in conformity with the right in its first meaning. Such handling or will was called "right" because it was in conformity with what right commands, prohibits, or permits. For Marsilius, "right" in its second signification was nothing other than that which was willed by the active command

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72 See more in Brett 1997; Mäkinen 2001; Varkemaa 2012.

73 Brett 1997: 50–68.

74 Ibid., 2.12.6: 10: "Dicitur autem ius secundo modo de omni humano actu, potestate vel habitu acquisitio, imperato, interiori vel exteriori, tam immanente quam transeunte in rem aliquam aut in rei aliquid, puta usum aut usumfructum, acquisicionem, detencionem seu conservacionem aut commutacionem […] conformiter iuri dicto secundum primam significationem." Translation in Brett 2005: 253–254.

or prohibition or permission of the legislator.[75] It should also be noted that for Marsilius *ius* as a species of subjective right was primarily an act.[76] In this sense, Marsilius' understanding of *ius* was fundamentally in accordance with the Aristotelian idea.

As Marsilius's second signification of *ius* above shows, he also defined right as being predicated upon every human act (*actus*), power (*potestas*), or acquired disposition (*dispositio*). This was a common definition among late medieval scholars. The background for this signification of *ius* was partly an Aristotelian distinction between actuality (Greek *energeia*, Latin *actus*) and potentiality (Greek *dunamis*, Latin *potential*). William of Ockham, for example, combined the language of rights with that of power, pointing out that a right was a potential for action, but not connected with being. Natural rights were merely abilities of the people who have them—as "subjective powers of action."[77]

The twelfth-century canonists used this meaning of *ius* when defining a natural right. Gratian's *Decretum* contained several definitions of *ius naturale*. One commonly cited definition goes as follows:

> Natural law (*ius naturale*) is the law common to all peoples, in that it is everywhere held by instinct of nature, not by any enactment: as, for instance, the union of man and woman, the generation and rearing of children, the common possession of all things and the one liberty of all, the acquisition of those things which are taken from air and land and sea; also the return of a thing deposited or money loaned, the repulsion of force by force.[78]

This definition of *ius naturale*, which pointed to instinctual behaviour, is not Gratian's own. He took it from Isidore of Seville's *Etymologiae*.[79] The *Decretum* also contained other definitions of *ius naturale*, but the one above was the most influential. The first sentence of the definition—"*ius naturale* is the law common to all peoples, in that it is everywhere held by instinct of nature, not by any enactment"—was repeated and reformulated among the decretists.[80]

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75   Ibid., 2.12.10.

76   See more Brett 1997: 63–64, n. 43, where she also stresses the difference between Marsilius and Ockham.

77   For Ockham's theory, see Brett 1997: 84; Tierney 1997; McGrade 2006; Mäkinen 2012.

78   Dist. 1 c. 7; translation in Tierney 1997: 59.

79   Tierney 1997: 59 (see also Isidore of Seville).

80   Tierney 1997: 60.

One of the most influential definitions was presented by Rufinus (d. 1192) in his *Summa Decretorum* (c. 1157–59). He defined *ius naturale* as "a certain force instilled in every human creature by nature to do good and to avoid the opposite."[81] Rufinus did not refer to any earlier source, but there might be something parallel with Cicero's *innata vis*.[82] The definition clearly referred to the basis of moral conscience. The concepts of *ius naturale* and *conscientia* were understood as synonymous. This was evident also for other definitions, for instance, that of Simon of Bisignano, a decretist of the twelfth century, who defined the natural *ius* as "a force of the mind the superior part of the soul, namely reason which is called sinderesis." Another decretist of same period, Sicardus, stated that "*ius* is called natural [...] from human nature, that is a certain force or power naturally instilled in man."[83] The deceretists occasionally gave a Stoic interpretation of the term as meaning a force pervading the whole cosmos; usually they included Gratian's view that *ius naturale* was a code of moral law revealed through scripture and was also accessible to reason, but often they added a subjective definition of the term that was not evidently present in Gratian's texts at all.[84]

Some modern scholars take this meaning as the most important ultimate source of subjectively understood natural rights.[85] Brian Tierney, for example, pointed out here that "we ought to say that moral precepts are effects of natural *ius* or that they derive from natural *ius* rather than that they are natural *ius*."[86] This was in accordance with a traditional understanding of natural law. However, more important for Tierney is the definition of *ius* as a faculty or power. It is in this idea that he discovers the birth of an individual, subjective understanding of *ius*.[87] Tierney even compares the definition with that of Jean Gerson, who described the starting point of his theory of rights with the

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81   Rufinus 1902: 6–7. Cited in Tierney 1997: 62.

82   Tierney 1989: 63.

83   Op. cit.: 63–64.

84   Ibid.: 62.

85   Tierney 1997: 62–65. In his article "Origins of Natural Rights Language: Texts and Contexts, 1150–1250" (1989), Brian Tierney argues that "the decretists put forward a subjective definition of a natural right in terms of faculty, ability, or power of individual persons associated with reason and moral discernment." According to Tierney, this canonistic teaching on natural rights influenced later philosophical and juridical discussion on rights. More particularly, Tierney based his argument, on the one hand, on the textual analyses of the decretist glosses on the definitions of *ius naturale* in Gratian's *Decretum* and, on the other hand, on the decretist discussion of the example of a poor person in extreme necessity.

86   Tierney 1989.

87   Tierney 1989: esp. 64.

words "a faculty or power in accordance with right reason" associated with free choice and *synderesis*.[88] However, *ius* in this meaning, in the sources of the decretists, refers to moral discernment not to a law or a right *per se*.

5   Animals and *Ius Naturale*

In his treatment of *ius gentium*, the right of peoples (or the law of nations), Aquinas gave a different description. Citing the text of Roman lawyer Ulpian in the *Digest*, Aquinas stated that "to apprehend a thing absolutely does not belong only to man, but even to the other animals; and therefore right, which is called natural [...] is common us, and to the other animals."[89] Ulpian has maintained that "a right was what nature teaches all animals (*ius est quod natura omnia animalia docuit*)," and therefore, the law of nature was common both to human beings and other animals.[90]

Jean Gerson stated in accordance with his broad definition of *ius* that *ius per se* belonged to every creature. He described *ius* as a potential for specific action, such as the sun that has a right to shine and the birds which have a right to fly. For him, all creatures, by their very nature, had positive rights.[91] The roots for his interpretation are also to be found in Ulpian's definition.[92] In accordance with this definition, a right was common not only to human beings but belonged to all animals, whether born in the sky, on the earth, and in the sea.[93] Everyone was taught to know this natural order of law/right through one's *ratio*. It was not dependent on any social institutions and circumstances but on undivided, sovereign, and divinely originated power.[94]

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88   Tierney 1989. However, it seems that Tierney has overestimated the subjectivity of these definitions since they are describing merely moral consciousness in terms of natural law. It should be noted that the decretists also use the notion of *ius naturale* as a synonym for *lex naturalis*.

89   *Summa theologiae* 2a, 2ae, q. 57, a. 3.

90   D 1.1.1: "Ius naturale est, quod omnia natura animalia docuit: nam ius istud non human generis proprium, sed omnium animalium ... commune est."

91   For the context of Gerson's theory and motives for defining a right in this way, see Brett 1997: 83–85. Conrad Summenhart also maintained a similar interpretation. See Tierney 1997: 248; Brett 1997: 126.

92   Institutiones 1.2pr: "ius naturale est quod omnia animalia docuit."; Dig. 1.1.1.

93   Dig. 1.1.1.: "nam ius istud non humani generis proprium, sed omnium animalium [...] commune est."

94   Thomas Aquinas also referred to this definition in his *Summa theologiae* 2a, 2ae, q. 57, a. 3. Since his primary notion of natural right highlighted the notion of rational nature

However, Gerson also gave a strict definition of *ius*, which he referred to as the basic definition of right. In accordance with such an interpretation, "a right is an immediate faculty or power pertaining to a thing according to the dictate of right reason (*recta ratio*)."[95] For Gerson, *recta ratio* was central in the elucidation of law, and therefore, rights were consequent upon the law that governs those individuals. The strict definition concerned ethics and politics, and only rational creatures.[96] Conrad Summenhart had also argued that animals and inanimate creatures possessed a kind of dominion with associated natural rights.[97]

For Francisco de Vitoria as well as for many scholastics before him, there are no rights (*iura*) without human beings. More particularly, Vitoria's theory of rights is deeply connected with certain suppositions about the human psychology and nature. He pointed out that the capability of moral and juridical possession required a morally relevant subject to whom justice is owed. A morally relevant subject was based on the rational nature of human beings, created as the image of God (*imago Dei*). According to Vitoria, right and dominion are given to all human beings in creation.[98] He referred to the scripture (Psalm 7:8 and Genesis 1:26–28), to natural law and to Aristotle. For Vitoria, rights reside in the possession of a rational nature, not in the exercise of reason. Therefore, even children who had not yet attained the use of reason were capable of *dominium* rights.[99] Moreover, Vitoria added that children had *dominium* because they could suffer injury and because in law their goods were held independently from those of their tutors. But as they could not make contracts they owned these goods only as their inheritance.[100]

The question whether irrational creatures have *dominium* rights also formed an important part of Vitoria's argumentation. He maintained that human beings differ fundamentally from irrational animals in that the human person

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and the right was closely connected with law, the arguments for natural rights among animals in article 3 have caused problems for modern scholars. See Brett 1997: 94–95, where she explains the opposite interpretations.

95   Jean Gerson, *De vita spirituali animae*, vol. 3: 141: "jus est facultas seu potestas propinqua conveniens alicui secundum dictamen rectae rationis." Translation in Brett 1997: 81.

96   Brett 1997: 81.

97   Conrad Summenhart, *De contractibus* 1.8. For the discussion on animal rights in Gerson and Summenhart, see Tierney 1997: 248.

98   *De justitia*, 2a, 2ae, 62.1., 71: "... homo est omnibus perfectior: ergo omnia alia ordinantur propter illum ... ergo habent jus et dominium super omnes illas."

99   *De indis*: "Pueri ante usum rationis possunt esse domini. Hoc patet quia possunt pati iniuriam, ergo habent ius rerum. Ergo et dominium, quod nihil est quam ius."

100   *De indis* 1.5.

does exist for his or her own sake, not for the sake of another, as do animals.[101] Vitoria stated very clearly that irrational creatures could have no rights. He presented several arguments to defend his idea. For Vitoria, animals could not have *ius* because they could not suffer *iniuria* (injury). Since they could have no rights, they also could have no dominion—because dominion itself was a right.[102] This shows how in his doctrine of natural rights Vitoria stressed the unique value and status of a human person—which has been a central idea of later human rights theories.

Vitoria also argued that animals could not have rights referring to Aquinas' idea of self-mastery which stated that every human being was master (*dominus*) of his or her own acts. Through exercise of reason and will only human beings could dominate all other creatures. The key distinction between humans and other creatures was, therefore, that human beings could act freely on account of their self-mastery. Other animals acted by necessity. Vitoria added to this that self-dominion was a right inhering only in humans. It should be mentioned that Vitoria's definition of the concept of *ius* as a subjective faculty was based not on Aquinas but on Conrad Summenhart's doctrine, according to which "*ius* is a power or faculty pertaining to anyone in accordance with the law."[103] However, Vitoria also took an argument from Aquinas (and Aristotle), in which he stated that *ius* referred to licit behaviour "in accordance with the laws." Thus he was able to add that the word power (*potestas*) was often used to mean a right and was able to sum up his definition "whoever has a faculty in accordance with the laws has a right."[104]

To support the equivalence between the notions *dominium* and *ius* (*dominium* rights) Vitoria used Conrad Summenhart's definition of several meanings

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101 *De indis*: 72: "Nec est idem de creatura irrationali, quia puer non est propter alium, sed propter se, sicut est brutum." This idea is a central argument even to the Catholic contemporary understanding of natural rights. The Second Vatican Council states in its Pastoral Constitution on the Church in the Modern World that man "is the only creature on earth that God willed for its own sake." See *Gaudium et spes*, 24. Cited in Williams 2004: 56 (47–59).

102 *De justitia*, 2a, 2ae, 62.1.: 69–71; *De indis*, 1.12: 26–27. The Latin word *iniuria* did not mean simply harm but unjust harm. See Tierney 1997: 268, note 53.

103 *De justitia*, 2a, 2ae, 62.1, 64: "Dicit ergo quod jus est potestas vel facultas conveniens alicui secundum leges." Here Vitoria had slightly misquoted Summenhart, who had written— following Jean Gerson—of a power or faculty "in accordance with right reason" or "in accordance with primal justice." For Summenhart's and Vitoria's definition of the notion of *ius*, see Tierney 1997: 259–262.

104 *De justitia*, 2a, 2ae, 62.1, 65: "Quicumque ergo habet facultatem secundum leges, habet jus." See also Tierney 1997.

of *dominium*.[105] *Dominium* could refer in its strict sense to a certain superiority, for instance when a ruler has dominion over his subjects. According to Vitoria, this kind of dominion was not equivalent to *ius* because an inferior could have a right against a superior even though he had no dominion over him.[106] *Dominium* could also mean ownership of property. In this meaning it was not equivalent to *ius* either. A person could, for instance, have a right in a piece of property, such as use or usufruct, without being the actual owner of it.[107] Only the very broad sense of *dominium* could be equated with *ius*, because a person who deprived another of a right was said to be guilty of theft.[108] For Vitoria, this was an abusive use of language since these words were often used indifferently in moral theology.[109]

6 Right as a Licit Power to Do Something

The common definition among the late medieval philosophers and lawyers was that a right was a licit faculty or power (*ius est facultas seu potestas licita*) to do something. The word "*licita*" is an important concept here and means permissible in accordance with *recta ratio*.[110] A right was understood merely as a normative power, i.e. a right was a natural power to act or to do something—even toward oneself—not prohibited by law. In this meaning, natural rights were understood as independent licences for action, wherein the individual and his or her choices were sovereign. Therefore, natural rights always have an object, which can also be the person himself. Importantly, in this sense, a right was also understood as an independent concept and distinct from law. Jean Gerson, for example, did not accept the idea that a penalty was a right, despite the fact that it was just and in accordance with the law.[111]

The idea of a right as *potestas licita* was, however, very general. Most authors connected the term with the hierarchical implications or emphases of *potestas*. In this sense, to have a right implied a dominating position and carried

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105   For more detailed discussion on Vitoria's dominion rights, see Mäkinen 2012: 17–38. For Summenhart's doctrine of *dominium*, see Varkemaa 2012.

106   *De justitia*, 2a, 2ae, 62.1, 5.

107   Ibid., n. 6.

108   Ibid., n. 8: "quia si aliquis subriperet rem ab usurario vel usufructuario vel possessionario, dicetur fur, et teneretur illis restituere … qui diceretur contractio rei alienae invito domino, et tamen non invito prorietario."

109   Ibid., 67. See also Tierney 1997: 260–261; Brett 1997: 128–129.

110   Brett 1997: 128; Kilcullen 2009.

111   Jean Gerson, *De vita spirituali animae*: 141.

similar connotations as authority (*auctoritas*) or dominion (*dominium*). For William of Ockham, for instance, a right (*ius utendi*) was not an act or an actuality but a form of power (*potestas*) in the Aristotelian sense of a potential for action.[112] The *ius utendi* was the basic juridical attribute justifying personal activity, in other words, a subjective power of action.[113] This kind of understanding further directed his definition of *dominium* since Ockham replaced *dominium* with right as the axial analytic category as follows: "*dominium* is the principal human power of vindicating and defending a temporal thing in a human court."[114]

It should be mentioned that Ockham considered a subjective right to be a *potestas licita*, not a *potestas iusta* and, therefore, carefully distinguished between the just and the licit. A licit act may not necessarily be just.[115] For Ockham, *potestas licita* could be either natural or positive. One is able to give up the positive *potestas licita* but not the natural. Thus the Franciscan friars had *licita potestas utendi* in their daily life; however, in the case of extreme necessity, they lacked both.[116] Ockham added that "if […] there should be some consumable thing, which is in no one's *dominium*, the general power of using suffices for this, that someone should licitly use it, if there is not other impediment."[117] This "general power" (simply a *potestas utendi*) was God-given in creation. It was twofold, including *dominium* over all the other creatures and the power to use certain things. Only the latter power concerned animals as well.[118]

Some authors, for example Conrad Summenhart, specified the idea of *ius est potestas licita* in using the conceptions from Aristotelian natural philosophy. For him, a right was the potency or ability to act which the law had conferred upon a person. He saw no hierarchical aspects in this meaning. Therefore, a slave could have *potestas* rights towards his master in the same way that his master had over him.[119]

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112   William of Ockham, *Opus nonaginta dierum*, c. 2: 302.

113   Brett 1997: 63, where she also points out that it is here that Ockham's view differed from the earlier Franciscans, to whom the *ius utendi* was a relation of control over things.

114   William of Ockham, *Opus nonaginta dierum*, c. 2: 306: "Dominium est potestas humana principalis vendicandi et defendendi in humano iudicio rem aliquam temporalem." For the Roman legal background for such a definition, see Kriechbaum 1996: 14–23.

115   Brett 1997: 64; Mäkinen 2012.

116   William of Ockham, *Opus nonaginta dierum*, c. 61: 561. See also Brett 1997: 65.

117   William of Ockham, *Opus nonaginta dierum*, c. 4: 203–205.

118   Ibid., c. 14: 432.

119   See more in Varkemaa 2012: 66–77.

It should be mentioned that neither for Ockham or for Summenhart was the power (*potestas*) related to *ius* an active power such as intellect or will, nor was it a passive power such as the potentiality of brass to form a statue. This power also covered inaction as well as making claims. Therefore, a person could have a right to do something without having any causative or agentic power to bring the act about. Conrad Summenhart, for instance, discussed the metaphysical status of rights. The power as such contributed nothing; rather, the meaning of a right lies in the concept "licit."[120]

7   Conclusions and Further Elaborations

The analysis has shown that the late medieval discussion on natural rights was a tangled web of ancient philosophical and legal notions. It is, therefore, impossible to give a coherent view of this development without focusing on the interpretations of each individual scholastic on the subject. In this article, I have tried to shed light on the subject, focusing only on some central figures in the history of right(s).

It should be noted that for medieval scholars natural rights were moral rights, not conventional rights such as legal or political rights. Like moral rights, natural rights were not granted or stated by legislators; they had grounds independently of the system of rules. Common to all scholastics, who treated a right as a subjectively understood notion, was the fact that rights were understood as features of human nature—whether powers, faculties, or forces—and were, therefore, something which belong to human beings. They took them for granted: natural rights were built into human nature, having their very ground in divine creation.

The common definition of "a right" among medieval authors was to treat it as an object of justice, which was in accordance both with the Aristotelian tradition and classical Roman law. Aristotle distinguished between the *dikaios*, a subjective virtue of a just man, whose will is to give to each his due, and *dikaion*, that which is just. In Roman law in its classical period, the notion *ius* was understood as *to dikaion*. Ancient legal and philosophical tradition highlighted the idea that natural right belonged to all nature. Medieval authors, such as Aquinas, perpetuated the idea that a right was an action and *ad alterum*. It was a social act which occurred between equal members of a civil and political society. Only in this sense were people called "others." In other words, right was properly a relation: a relation toward others. Aquinas' theory

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120   Tierney 1997: 39–40, 240–241, 245; Kilcullen 2009: 12–13.

of natural right had mainly an objective emphasis and was not important in the emergence of subjectively understood natural rights.[121]

A change was, however, seen in the understanding of right within the Thomist tradition by sixteenth-century scholars. They understood right, *per se*, as a function of law, but lost the sense that this just action must necessarily be *ad alterum* or *inter homines*. Despite the fact that *iustum* was still understood in an objective sense (i.e. not as a quality of the subject but rather the right thing for that subject), it also had subjective connotations in the sense that it was for a subject rather than between subjects.[122] This change (and departure from Aquinas' teaching) was even deeper in the Spanish neo-scholastics of the seventeenth century.[123] Francisco Suárez, for example, defined *ius* as something beneficial. It was a power (*potestas*) or liberty (*libertas*) possessed by an individual and a quality that characterised one's being.[124] In this development, the important idea was the medieval definition of *ius* (or *dominium*) in which the right was predicated upon every human act (*actus*), power (*potestas*), or faculty (*facultas*). The background for these kinds of definitions lay partly on an Aristotelian distinction between actuality (Greek *energeia*, Latin *actus*) and potentiality (Greek *dunamis*, Latin *potentia*). William of Ockham, for example, stated that a right (*ius utendi*) was not an act or an actuality, but a form of power in the Aristotelian sense of a potential for an action. In this sense, a right was understood as the basic juridical attribute which justified personal activity. In other words, a right was a subjective power of action. Later on, Conrad Summenhart referred to Aristotelian natural philosophy when defining the concept of *ius* as licit potency or the ability to act in accordance with the law and right reason.

The natural right tradition influenced by Stoicism and Christianity moved towards a command-theory of law and a subject-based interpretation of right, and prepared the modern conception of human rights.[125] Especially the twelfth-century decretists, and Jean Gerson have been seen as representatives of the Stoic doctrine of a natural law in human beings. For some Stoics, and also for Cicero, there was a force in a human being through which one could

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121   See Tierney 1997. Brett (1997: 91, n. 12) also gives some passages where Aquinas seems to treat the notion of right in a subjective sense. Nevertheless, Aquinas' primary definition of *ius* was in accordance with an objective sense.

122   Brett (1997: 116) where she especially refers to Cardinal Cajetan (Thomas de Vio) and Konrad Köllin.

123   See Tierney 1997.

124   Francisco Suárez, De statu perfectionis, in Opera 15: 8.5.29: 571. For Suárez's teaching on natural law and natural rights, see Tierney 1997: 301–315.

125   Villey 1975; Douzinas 2000: 50.

discern *ius naturale*, the objective natural law that pervaded the whole universe. Since Stoics understood *ius naturale* merely in terms of cosmic determinism, their reflection on *ius naturale* never led to a doctrine of natural rights.[126] In medieval interpretation, their doctrine was used as part of natural rights teaching.

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126   Tierney 1997.

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PART 3

Morality and The Good Life

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The Fortunes of Virtue Ethics

Hallvard Fossheim

In this article, I intend to trace two dimensions of agency as conceived in Anglo-American Aristotelian virtue ethics, from their incipient phase to current criticisms of virtue ethics. The claim I wish to make is that there is a continuity between the criticism of modern moral philosophy initiated by G.E.M. Anscombe and carried further by virtue ethics as a trend in ethics, and the criticism with which virtue ethics is now in turn met.[1]

There is a tendency to think of virtue ethics as simply the form of normative ethics that concentrates on agents rather than acts.[2] There is more to it than that, however. Historically, virtue ethics came into play, and has remained in play, not least as a criticism of exaggerated faith in the individual as an unproblematic source of moral action. Among theorists of forms of ethics prevalent in the Anglo-American sphere when virtue ethics first entered the scene, the focus was elsewhere, not least on issues pertaining to the status of ethical justification. There was little tendency to see the question of agential constitution as a major issue, and even less tendency to construe that agent as weak or deficient in complex ways. The notion of the practically engaged individual proffered by virtue ethicists, however, is generally one of a type of agent for whom good (virtuous) action is a real accomplishment. This dimension of achievement is only reinforced by the ideal of the perfect agent implied by virtue ethical perfectionism. Perhaps somewhat paradoxically, although virtue is a form of strength, virtue ethicists have contributed importantly to uncovering sources of ethical error and weakness.

The tendency in virtue ethics to focus on agential weaknesses takes two main forms. First, there is the issue of motivation: of having emotional and cognitive

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1 An earlier version of this article was presented to The Ethics Programme at the University of Oslo in 2009. I am grateful to the participants for their useful responses, in particular to Jakob Elster, who was assigned as commentator on my paper. I am also indebted to two editors of the present volume for their valuable questions and suggestions.

2 In what follows, I will be dealing exclusively with virtue ethics as a modern phenomenon. That is to say that the term "virtue ethics" denotes only certain philosophical developments in ethics that have taken place during the last fifty-odd years. So although the article deals exclusively with the Aristotelian brands of virtue ethics, it takes no stance on whether, or to what extent, it might be correct to classify Aristotle himself as a virtue ethicist.

abilities ensuring right action in the sense that the agent's intentionality relates in the right way to the action. For the individual to realise herself as a morally successful agent is acknowledged as a real challenge in its own right. Second, there is the question of the ultimate sources for the agent's ethical development and upheld practice. This dimension of virtue ethical reflection has often taken the form of arguing against seeing activities as simply reducible to the agent.

In what follows, I will concentrate on these two dimensions of the claim made in the Aristotelian virtue ethical tradition that the agent, in a general sense, suffers under a deficit of control. (What is generally presented as the "control question" par excellence, the issue of *akrasia*, is only a subordinate facet of this much more pervasive tendency in the virtue ethical tradition, and will not be treated here.) This deficit shows up in the contention, shared by most virtue ethicists, that it is hard to be good.

After an initial framing of the issue in terms of Modernity (Section 1), I turn to the background and substance of the relevant aspects of Anscombe's text (Section 2). I then trace two main tendencies in virtue ethical thinking about the subject's shortcomings as characteristic of this dimension of the tradition after Anscombe (Section 3), before turning to consider two main strands of recent criticism of virtue ethics in that same light (Sections 4 and 5). I then present some counterarguments against the latter of these strands of criticism (Section 6). Finally, I very briefly venture forth with a consideration concerning possible future directions for virtue ethics, given the dialectic of the past fifty years (Section 7).

1   Virtue Ethics as a Criticism of Modernity

Aristotelian virtue ethics in its current form came into existence as a criticism of Modernity. At least this is an important part of its background and identity if we follow standard usage for both terms. As far as "Modernity" is concerned, this means using the term to denote, roughly, main intellectual and political tendencies of the period from the 16th century to somewhere in the 20th century. (In many and perhaps most respects, at least those among us who have not made it a personal assignment to critically study it are still living in Modernity.) The beginning of current Aristotelian virtue ethics, correspondingly, is Anscombe's famous paper "Modern Moral Philosophy" from 1958. The "modern" in Anscombe's title is not to be entirely identified with the present

semi-technical sense of "Modernity," but her analysis certainly works towards and has helped define that sense.

Broadly speaking, Modernity can be further articulated in terms of certain very general features. As a label for intellectual pursuits, both practical and theoretical, it signals a belief in *method*: in a procedure which, if adhered to strictly, will guarantee the desired result. Two pendants of this faith in methodology are, first, the notion that "one size fits all," that is, that the right answer does not ultimately depend on who is doing the maths; and second, a certain belief that both the truth and the way there, are somehow monolithic—"one size *only* fits all," if you will. Furthermore, and forming part of the same cluster, one often finds an attitude towards both material and solution as being quantifiable. Along the same axis one often encounters an ideal of the subject as divorced from its surroundings, and of reason as somehow purified of personal disturbances. Again, this putative divorce of subject and object is tied to a notion of control as a basic mode of the relation between human reason and the rest of nature. Finally, Modernity is marked by a strong tendency to consider not the past, but the future as a source of salvation.[3]

Most of the personages that can be said to represent Modernity do not perhaps subscribe to all, but all subscribe to some, of the above characteristics. Favourite paradigms of Modernity as thus defined include, not surprisingly, Descartes and Kant.

We are going to focus exclusively on the individual agent in this connection. Any introductory text will inform one that, generally, a belief in the autonomous subject is a highly central feature of Modernity/the modern. At least since Descartes, the individual subject has characteristically been set to perform Herculean tasks, tasks that were in earlier times rather left to God, or the community, or some combination of the two.[4] As we shall see, virtue ethics

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3   There is nothing very original about this list. For two discussions that have contributed to the general picture, cf. Jürgen Habermas (1992: e.g. 17–19); and Marshall Berman (1982: see esp. "Introduction" and the Faust chapter). Among other relevant theorists are Zygmunt Bauman (1989), Frederic Jameson (1991), and Richard Sennett (1992).

4   It is true that the modern era has also provided reasons for suspicion vis-à-vis the subject that are not unlike the visions of the human soul and of human agency evolved during Classical times or (more to the point) the middle ages. Marx, Nietzsche, and Freud (and few would deny them prominent positions in the procession of the modern) have, each in his way, found means of instilling in us a suspicion that we do not really know who or what we are as agents or persons—that the springs or motivations for our thoughts, desires, and actions might be very different from what we take them to be, and that the agency involved in our

can to a great extent be viewed as a set of ways of asking whether, or to what extent, we as individuals are capable of fulfilling our roles as moral agents.

2   Anscombe: Background and Text

Anscombe's essay remains the founding document of virtue ethics, to which the contenders often refer and always return; so there is every reason to consider it closely. What strikes the reader of "Modern Moral Philosophy" is how many thinkers and traditions are attacked in the course of its pages. To begin by mentioning some of the contemporary background to which she is reacting, one of Anscombe's main villains in her seminal text is Richard Hare. Her main quandary with Hare is that he, along with consequentialists more generally, does not see any action—not even, say, punishing the innocent—as simply out of the question: as a consequentialist, you must always be open to the possibility that the bottom line in terms of consequences will show that *this* time, punishing the innocent is the thing to do. The source of Anscombe's frustration seems to lie not in Hare's contention about the act as such, however, but rather in what the act says about the agent. In Hare's thinking, the focus on consequences goes with a lack of care for the agent's psychological state. Although he states that an agent's prescription will have implications for what that agent intends to do (in this and in similar circumstances), there is no clear link from an agent's prescriptions to that agent's attitude (Hare 1952: 9–11). Along the same lines, of course, Hare's notion that a consistent agent cannot really be morally mistaken does not go very well with reflection in terms of thicker ethical states (Hare 1965: 110). In short, it is not only that Hare does not supply a basis for reflecting over the agent as a complex entity, whose constitution beyond the ability to calculate is crucial for the possibility of right action: he seems positively to deny it.[5]

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lives is not the everyday self. (Remember also Kant's claim in the *Groundwork* that, for all we know, perhaps no action has ever been performed from a pure motive.) However, they all did this while in the same breath assuring us that they had found a way of overcoming this quandary—whether in terms of realising a Communist heaven, working towards a substitution of the Ego for the Id, or helping in the birth of the *Übermensch*.

5   Hare 1952 and 1965. As for W.D. Ross, the hero of an earlier generation but still a force in Anglo-American ethics as of 1958, he does say that no general rules can be laid down for weighing prima facie reasons (where prima facie reasons are defined as what is seen as reasons before one reaches the "all things considered" reason (1930: 41). But he also seems to think of the weighing in terms of finding the greatest balance, and of reaching a conclusion on the basis of comparative stringency. Such formulations suggest something like a quantita-

Among the rallying points of "Modern Moral Philosophy" are the importance of overcoming "morality" as ought, law, or obligation (in a specifically moral sense); the importance of coming to understand difficult issues about the complexity of human psychology; and, the importance of practices for performing, grasping and judging individual actions. It is not least by means of these excitingly argued contentions, that her text started what has in the course of time been identified as Aristotelian virtue ethics.

On the face of it, the term "modern" in her title does not mean much more than "current," and the term is not quite consistently used even in that respect. However, there is more to it than that. On the very last page, Anscombe defines "modern moral philosophy" as "the moral philosophy of all the well-known English ethicists since Sidgwick" (Anscombe 1958: 44, cf. 35). But earlier, the "modern" way of talking about moral themes was dated as commencing with Butler (p. 27), well over a century prior to the final identification. Here, Anscombe also uses the expression "modern times" (Anscombe 1958). And we are of course also aware that Hume and Kant are among her primary targets in the essay, and as such somehow belong to what is "modern."

Anscombe's use of the term "modern," while certainly also denoting something like "current," thus seems to have a more systematic function. "Current" in her argument must refer to something like whatever makes its impact felt, or decisively contributes to forming philosophical preconceptions, at the time of writing. As such, it is implicitly contrasted with what many historians (certainly historians of ideas) would agree to term pre-modern. In Anscombe's text, these are the notions of a divine lawgiver, virtue, and flourishing as basic to ethical reflection. So her diagnostic criticism of "modern moral philosophy" really is a criticism of the modern in a sense which ties up to our historical notion of the modern.

As noted at the outset, we shall focus on one strand of criticism of the modern pursued by "Modern Moral Philosophy," namely, the notions of the person or agent that are involved. In this respect, Anscombe's venom is directed

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tive measure. What is probably more to the point, however, is Ross's reference to the judge in such matters as having been well brought up (Ross 1930: 42). While the practical judgement called for is the judgement carried out by those who have been brought up into virtue, Ross does not treat this as in itself an issue of great difficulty. The above comments, including the insight that a quantitative measure is suggested, owe much to Henry S. Richardson, "Moral Reasoning" (*Stanford Encyclopedia of Philosophy*, http://plato.stanford.edu/entries/reasoning-moral/). (Ayer's emotivism in *Language, Truth and Logic* (1990) and elsewhere seems prominent among Anscombe's targets more generally, but in the context of "Modern Moral Philosophy," its most relevant feature is probably the more indirect issue of how emotivism undermines the possibility of a serious focus on and care for the agent's soul.).

not least towards certain forms of subject-faith which she perceives in what she calls "modern moral philosophy." It has not always been remarked to what extent Anscombe reacts against the law-oriented version of modern moral philosophy because it amounts to something like a usurpation of God's role. A law conception of ethics, she says, makes sense only with a divine lawgiver; and the idea that each subject can act as a lawgiver unto him- or herself, she therefore treats as mere drivel. It is this basic insight which informs Anscombe's ridiculing of moral "obligation" and the moral "ought" as well, since they play on the same idea of law (e.g. Anscombe 1958: 31). Furthermore, her criticism of the very notion of what is called *moral* is founded on it too: "the special so-called 'moral' sense" (ibid., 30) is nothing other than the hot air a discourse is reduced to once its animating principle—the divine lawgiver—is gone. In sum, Anscombe is pounding away at a philosophy that has allowed the subject, the individual human agent or person, to take a place it cannot possibly fill.

Focusing on the "anti-modern" drive of her argument, as concerned with a re-identification of the human subject involved, also allows us to bring into relief Anscombe's criticism of what is now often referred to as the blueprint view of ethics: the idea of a procedure that can, more or less mechanically, provide one with correct solutions to moral questions. She is adamant that, outside a group of intrinsically unjust courses of action (such as judicially punishing the innocent), we cannot go by general features in determining the significance of the circumstances. And here, "there can *in principle* be no canon other than giving a few examples." Providing such demarcation, she promises, will constitute a most complicated task. No set procedure like the one offered by contemporary moral reflection can lead us to a proper understanding of the practical field. And while it is true that her main discussion here is primarily about moral philosophers and philosophies, she does seem to think that what is difficult, or demanding, within a philosophical framework is even more so in the agent's first-person framework. (ibid., 40–42.) After chastising any philosopher who is ready to say in advance that it is open to question whether an intrinsically unjust action might be the correct action anyway, she adds in a footnote that, "[i]f he thinks it in the concrete situation, he is of course merely a normally tempted human being" (ibid., n7, 42). That is to say, making the right decisions makes for even more of a challenge on the ground, as it were, from the perspective of the involved agent, than from behind the moral philosopher's desk.

Anscombe sees modern moral philosophy as guilty of a sort of overconfidence concerning the level of proficiency of the individual agent. It is also obvious that she considers human agency to be more flawed and lacking in self-sufficiency than what is admitted in the prevailing thought of her day.

For in her analysis of how the focus on consequences does its work in the dominating form of contemporary thought, she makes a point of how what we might call the "flattening" of intention corrupts the agent. That is to say that in consequentialist thought, one's responsibility for a foreseeable consequence is not affected by whether or not one actually wanted that particular consequence to come about (Anscombe 1958: 40). What one intended and what one merely foresaw are both of a sort, and both go into the same calculations with a view to the overall effect. Now this, to Anscombe, is likely to corrupt the agent, precisely because a human being is the sort of creature to be tempted to do things for the wrong reasons and then say, or even think, that the intentions were after all honourable (ibid., 37). Anything can be hidden away in a sum of consequences. In the same vein, the overriding importance given to consequences as such also invites self-deception: the gap between expected and actual consequences can be used to justify much that is not justifiable, by way of (re)interpretation of what one in fact did expect. (Anscombe's extreme concentration on character and virtue also reveals itself on the level of interpellation. Based on their mode of moral argument, she brushes aside unnamed colleagues as possessing "a corrupt mind" [ibid., 42], and thus being beyond the reach of decent argument.)

Anscombe does not merely mean that people can come to abuse the system for evil ends. For our purposes, the thing to notice is that she acknowledges that it is difficult for the agent to know him- or herself, that one is liable to be mistaken about the sort of motives one is acting on, and that one's actions can come to form them in ways they cannot oversee. There is also a connection between this view of the agent as relevantly more complex than the mainstream philosophy of her day would admit, and the criticism of the blueprint view of ethics. What is wrong with a procedure of the consequentialist mould is not only its principle of refusing to see certain actions—and thus certain motives, and certain agents—as inherently corrupt. It is also a fact that such a procedure denies the complexity involved in correctly identifying motivations, agents, and actions. In more ways than one, then, the procedural view of the practical field does not take account of the complexity of the human agent.

It is important to note that Anscombe does not stop there. She goes on to diagnose the current lack of insight as centrally related both to a lack of appreciation of the social dimension of agency, and to variations within a grander, historical dimension of things. Overlooking the social dimension leads, not least, to a state of affairs where an artificial is/ought distinction is allowed to undermine a sounder analysis of action and agency. If, for instance, I order groceries and do not pay, it is the institutional conglomerate of ordering/selling/buying that makes it a fact that I owe money, a fact which becomes invisible

as something carrying ethical weight if it is forced into the is/ought divide as construed by Hume. Thus, Anscombe manages to argue that reasonable determinations of actions depend on taking seriously, in quite a specific way, a structural or institutional level which transcends the individual agent.

The historical dimension receives an analogous treatment. In focusing on effects without being able to offer any further reflection on what is good and what is bad, the consequentialist is a prisoner to standards current in the consequentialist's "society or his circle [...] they have nothing in them by which to revolt against the conventional standards of their sort of people" (Anscombe 1958: 38). The lack of proper reflection concerning agents and their actions thus becomes a conduit to indecency. These contentions about moral philosophy (and moral philosophers) are revelatory of the same lack of self-sufficiency that characterises agency as seen in relation to a practice or institution. For they also involve the insight that relating to tradition is a prerequisite for grasping the meaning of one's own claims and perspectives. Anscombe's analysis is a historical one precisely because she sees the predicament of current thought as due to its having lost connection with its own history.

On a more specific level, current thought uses concepts like "morally wrong" blindly. This concept is "an heir that is cut off from the family of concepts from which it sprang" (ibid., 43). So a lack of insight and self-sufficiency on the part of the subject is true not only of individual agents, but of modern moral philosophers as well, as a group cut off from their own historical surroundings. Both the philosophical ethicist and the human agent are so lacking in self-sufficiency as to need the surrounding support of a tradition—a tradition we have lost and must regain.[6]

In sum, Anscombe sees *hubris* (belief in safe procedures for the subject), brought about partially by historical developments (the subject taking on God's job, while losing the concepts with which to understand itself), and leading to downfall (corruption of the all too weak and self-deluding individual subject). The healing process in our own time cannot even begin without facing up to the fact that we are more complex and difficult beings, facing more complex and difficult situations or choices, than hitherto admitted. This seems to be the background against which Anscombe claims that the bulk of the tradition that must be regained is an understanding of " 'action,' 'intention,' 'pleasure,' 'wanting,' " and most of all *virtue* (ibid., 40).

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6   Although this last point is addressed by Anscombe primarily in her discussion of the loss of
     a critical framework on p. 38, her invocation of Plato and Aristotle on, e.g., pp. 43–44, as well
     as the tenor of the whole paper, seems very clearly to point in the direction of a partial re-
     appropriation of Aristotelian insights.

3   Two Approaches in Virtue-Related Arguments after Anscombe

Seen from today's perspective, "Modern Moral Philosophy" constituted a sort of founding act of virtue ethics. Now in some respects the text is a storehouse of unrealised possibilities—what, for instance, of Anscombe's almost exclusive focus on justice, a virtue certainly not overexposed in the discussions of the last fifty years? All the same, her contentions about the subject have been taken up and developed by a string of authors that have come to define (not a mainstream, but) central concerns in virtue ethics. In what follows, I will try to bring out a way in which we may speak of a significant continuity here, along two different but related strands of thought.[7] It would be preposterous to claim that all virtue ethicists can be smoothly fitted into the present oversimplifying sketch of virtue ethics. It is impossible to do anything like justice even to the complexity and innovativeness of the thinkers explicitly treated within the present framework, but then again, that is not my intention. All I claim is that the two tendencies to be sketched below—tentatively named "the Hursthouse approach" and "the MacIntyre approach"—have been highly important to the way Aristotelian virtue ethics has developed during the last half century.

3.1   *The Hursthouse Approach*

As argued in the previous section, one of two main strands in Anscombe's founding paper is the focus on successful moral agency as a highly demanding feat in its own right. In the field of current virtue ethics, few have done more than Rosalind Hursthouse to deepen our understanding of this feature of agency, and not least her *On Virtue Ethics* is more or less recognised as a standard text on it. I thus take the liberty of naming "the Hursthouse approach" as virtue ethical arguments that work towards establishing the complexity and demandingness of individual ethical agency.[8]

To Hursthouse, an action's being morally motivated does not amount merely to its being done for some particular reason. Motivation in a narrow sense would be neither sufficient nor necessary for virtuous action. Rather,

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7   The work of scholars like John Cooper (1986 and 1999), Terence Irwin (1990), Richard Kraut (1989), and Sarah Broadie (1991) I consider as primarily exegetical, so although they are heavily leant upon by anyone doing virtue ethics, they will dominate these proceedings only indirectly.

8   Hursthouse (1999). Other prominent figures whose writings reflect this understanding of agency are Philippa Foot and John McDowell. Cf., e.g., the complexities of successful moral agency as analysed in Foot's "Virtues and Vices" (2002: 1–18), or McDowell's "Virtue and Reason" (1979: 331–350).

in order for moral motivation in her sense to be attributed to the agent, the agent must be acting *from virtue*. This is to say that the agent is, by the action, displaying something which by far transgresses that action. The agent seeks to establish "a substantial claim about the future" (with respect to reliability) and, most importantly, a claim about what sort of person the agent is—a claim that goes "all the way down" (Hurtshouse 1999: 123). That the claim goes "all the way down" means that it involves the person or character as an integrated entity. That is to say, the action is not only a singular act from a single, specifiable motive, but stems from and bears witness to the agent's ethical state as a whole.

Now this sounds difficult. And so it is. Hursthouse does not tire of emphasising just how difficult, how demanding, it is to act morally. Where other ethicists might use as a selling point that "anyone can do it," Hursthouse's oft-repeated dictum is that not just anyone can. She excludes *a priori* children or adolescents from moral action, because the required integration of character and level of experience are not available to them. On a formal level, much of the complexity is brought out by reference to the reciprocal dependence of the various virtues. Besides the demands concerning each separate virtue, they cannot ultimately be seen as separate—"for not only do the ranges overlap but the same sorts of judgements about goods and evils, benefits and harms, what is worthwhile and what is unimportant crop up all over the place" (ibid., 131).

Hursthouse's talk of the difficulties connected with being (and, not least, becoming) good has a wider vista than much of Anscombe's foundational text. Anscombe's most vehement attacks concern sources of long- or short-term deception and self-deception, rather than more general challenges concerning the realisation of virtue. Hursthouse, by contrast, first and foremost stresses the hard work it takes to get someone (oneself or someone one cares about) to become ethically better, and the hard work it sometimes takes to figure out what one should do in a given situation.

In spite of her emphasis on judgements about things that are ubiquitously important in the agent's life, Hursthouse is not thereby subscribing to a view according to which the agent should be able explicitly to derive her practical conclusions from general principles (Hursthouse 1999: 138; it is no accident that the author she refers to the most in these contexts is John McDowell, who has done much to articulate an Aristotelian criticism of so-called blueprint views of morality). It is the difficulty of acquiring a sufficiently good character that motivates her claim that full virtue amounts to the possession of "a correct conception of *eudaimonia*" (ibid., 136), and that an apparently good action will be revealed as not stemming from virtue if the agent is found out to be vicious in some respect (Hursthouse 1999: 147, 154–155). Hursthouse seems

very aware that such a state of virtuous integration is rare. So in her approach to virtue ethics, the human subject is a fragmented being. The role of moral perfection as an ideal is also clear from the stress she places on virtue as something conceived as coming in degrees, and in her avowal that only "exceptional and extraordinary people" (ibid., 148) can be expected to see through pervasive misjudgements (exemplified by 1930s anti-Semitism).

3.2 *The MacIntyre Approach*

Now for the strand of virtue ethical argument that builds its case for seeing agency as challenged on broader social and cultural considerations. For reasons soon to become apparent, I have named this approach after Alasdair MacIntyre.

MacIntyre is considered to be the most distinctly and explicitly anti-modern of virtue ethicists, in something like the quasi-technical sense of "modern/ity" outlined above.[9] This status is intimately related to his avowed Aristotelianism. However, MacIntyre's focus is not on the fragmented status of the agent per se: rather, he argues that the only unity a person has depends on and abides in supporting practices and interactions that by far transcend the individual. So MacIntyre's Communitarianism is motivated primarily by a picture of the individual as lacking in self-sufficiency.

As is well known, the atomism of the "modern self"[10] meets with little but scorn from MacIntyre (1996; 1984).

While most other researchers commonly denoted virtue ethicists tend to take their point of departure from Aristotle's moral psychology of the individual, MacIntyre's perspective is the elaboration of the spheres that display human beings as social animals. Our social nature is what constitutes the lack of self-sufficiency that functions as a springboard for the argument of *After Virtue*. And so the "community" in his brand of communitarianism is, first and foremost, Aristotle's *polis*, interpreted as a closely-knit social unit built on shared values, practices, and traditions. MacIntyre's theory of practices and traditions as a source of value and insight transcending the individual is thus proffered as an alternative to "the modern self with its criterionless choices" (MacInture 1984: 202). That we live "after virtue" is to say that we live in something like the world outlined by Anscombe, where talk of morality constitutes only the scattered remains of a discourse which once provided a coherent and habitable world picture.

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9   As he says, we can still abandon "the standpoint of modernity" (MacIntyre 1996: 110–111, 391–392).

10   MacIntyre (1984: 202).

The starting point for MacIntyre is a different one from Anscombe's, but it indicates the same sort of questioning attitude towards any notion of the individual as the source or arbiter of choice and action.[11] Although they touch upon it only indirectly, the image of the subject that transpires from MacIntyre's analyses is that of a being incapable of understanding itself, forming itself, or reaching happiness outside over-individual practices and traditions. It is only by submitting itself to them that the individual can become part of something that will allow for virtue, agency, or even a life in any proper sense. Not some individual life-plan, but a background of transmitted forms of complex activities, is the way towards excellence and fulfilment. Accordingly, MacIntyre's action analysis too is deeply indebted to that of Anscombe.[12]

To appreciate the extent of his anti-individualism, it will be useful to recapitulate MacIntyre's take on what it means to learn something. Becoming socialized into a practice requires subordinating oneself to that practice. It is the practice, not the budding practitioner, that holds the criteria for success, the standards of excellence. Only by accepting the authority inherent in the practice—and what it reveals concerning one's own shortcomings (MacIntyre 1984: 190)—can one hope, e.g., to learn to play a musical instrument, or speak a foreign language, or compose a historical study. This is the core of MacIntyre's criticism of liberal individualism for thinking that a community is simply an arena for individuals' self-chosen conception of the good life, and that political institutions are there only to provide the law and order required for such a life (ibid., 195). To him, the very identity of a person depends not on psychological continuity, but on the continuity of communities—on life-defining narratives which rest on practices and their virtues (ibid., 217, cf. 221).

MacIntyre's notion of a virtue comes in at this point, as what makes it possible for one to share in the goods internal to the practice in question—the way patience, honesty, courage, and justice can be thought of as requirements for learning, say, a language. It goes without saying that these practice-constitutive goods are not dependent on the choices of the individual practitioner. Only by allowing oneself to be shaped by a practice can one hope to acquire virtue. Although arising in what might appear a limited set of circumstances, a virtue

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11   One philosopher who has been very important to virtue ethics, while never styling himself a virtue ethicist, is Bernard Williams, whose arguments pertaining to moral luck share a basic structural feature with MacIntyre: the acquisition of virtue is in principle, in a crucial respect, beyond our control; cf. not least his *Moral Luck* (1981: 20–39).

12   E.g., substitute "institutions" for "settings" in his claim that "there is no such thing as 'behaviour,' to be identified prior to and independently of intentions, beliefs and settings" (MacIntyre 1984: 208), and you have a recognisably Anscombian claim.

once possessed will manifest itself in very different types of settings. This is not to say, however, that MacIntyre holds on to the unity of virtues thesis common in "mainstream" virtue ethics, and this is presumably because, again, it is the practice and not the individual which remains the source of (realisations of, as well as criteria for) order and excellence. (ibid., 191, 200, 205.)

3.3 *Summing Up*

In the MacIntyre approach, the lack of faith in the individual as capable of virtuous agency does not (as it does in the Hursthouse approach) stem from the insight that virtuous action is demanding and virtue is a rare and difficult thing. Rather, it stems from the related but logically independent insight that the individual is not capable of founding his own practices; that the realisation and upholding of human goodness takes place on a level which far transcends the individual.

Both strands of thought are clearly identifiable in Anscombe's essay. The Hursthouse branch of argument builds on the general complexity of agency, and difficulty in pinpointing virtue, acknowledged by Anscombe. As for MacIntyre, it is not only his contention that we live in a world after the fact (after virtue), among leftovers of what was once a coherent whole as far as ethical discourse and practices are concerned, which unambiguously harkens back to Anscombe's diagnosis of modern moral theory as lacking a necessary requirement for obligation and legislation. The MacIntyre branch of argument also builds on Anscombe's talk of flourishing and of institutions as something which is not simply up to the individual, atomistically conceived.

What the two approaches share, when compared with concurrent alternatives in ethics, is a devotion to spelling out demands made on the agent that go beyond factors specifiable in terms of, e.g., rule-following or the external characteristics of action. On either approach, moral agency is held up as more complex, and more difficult, than in the standard alternative avenues to philosophical ethics.

My sketch in terms of two approaches is meant primarily as a heuristic device, to bring out two main facets of how moral agency is problematised in virtue ethics. The two approaches thus do not neatly divide virtue ethicists into two camps. Rather, they are two main strategies for criticising modern conceptions on the specific issue of moral agency. Some thinkers can in fact more or less reasonably be placed primarily under one heading—Charles Taylor[13] and John McDowell, for instance, have contributed primarily to the historical

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13   Taylor, like Bernard Williams, is a thinker who has been important for virtue ethical theory without necessarily subscribing to it. Cf., e.g. Taylor (1989).

("MacIntyre") and psychological ("Hursthouse") approach, respectively. But Bernard Williams, for instance, has contributed to both (although his criticism of the Morality System, and of external reasons, has had an impact not least as far as the MacIntyre approach is concerned). So have Julia Annas, Philippa Foot, and Martha Nussbaum (although their discussions of individual virtues earn them central positions especially in what I earlier called "the Hursthouse approach").

4   No Rest for the Virtuous (1): Intuitions

Virtue ethics started out as a critical reaction to existing varieties of moral philosophy. So it is no surprise that its modern lifespan has been characterised by mutual criticism from proponents and opponents. During the past two decades, however, a particular form of criticism questioning the very basis of virtue ethics has manifested itself. It is still not clear to what extent these reactions will entail any radical revision of the existing accounts prevalent in virtue ethics. But what is almost certain is that, due to the criticism, virtue ethics will not look quite the same a few years from now as it does at present.

What seems generally to have gone unnoticed, is that the current revisionism concerns the very dimension of the ethical endeavour that (I have argued) was primary in getting virtue ethics started in the first place and has characterised its further development. The present debates are very different from the familiar exchanges between virtue ethicists and its doubters, which have in the main been devoted to issues like whether virtue ethics escapes a form of ethical egoism, or whether virtue ethics can provide practical guidance. In contrast to the quibbles that have traditionally been simmering between virtue ethicists, deontologists, and consequentialists, it is precisely presuppositions concerning the constitution of the subject, or character, and its features that the new revisionists hone in on.

In the present section, I will bring out the spearhead of a criticism that, in the main, keeps the more traditional philosophical shape of arguments directed at the reader's intuitions. In the next section, we shall look at criticism stemming from the empirically-minded stance known as situationism. As will become apparent, the two forms of critique represent radicalizations of the Hursthouse approach and the MacIntyre approach, respectively.

Nomy Arpaly's book *Unprincipled Virtue* (and the previously published article transformed into that book's third chapter, "Moral Worth") presents a new take on the virtues.[14] Her arguments amount to a (slightly hesitant) virtue

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14   Arpaly (2003) and (2002: 223–245).

theory, while constituting a rather radical criticism of the prevalent conception of moral wisdom or phronesis.

Interestingly, Arpaly does reserve a central position for virtue in her theory. But she argues strongly against the sort of reflectively unified agent that the *phronimos* is standardly thought to be in the Aristotelian tradition. To Arpaly, philosophers' tendency to posit such a unified subject stems not least from a diet of one-sided examples.[15] On the contrary, deliberation or reflective intellectual proficiency is neither sufficient nor necessary for virtue. That they are not sufficient is obvious from the existence of reflective people who, all the same, exhibit ill will. And to illustrate that they are not necessary either, Arpaly (2002: Ch. 3, *passim*) uses Huckleberry Finn as an example of someone whose reflections systematically lead him astray, but who by what she calls "inverse akrasia" ends up doing the right thing in spite of his best deliberations: Huck's deliberations lead him to conclude that he should hand Jim over to the slave's owner, and it is in this sense against Huck's best judgement that he ends up not doing so. His actions are what reveal Huck's true concern, in spite of his (attempts at) moral reflection.

What is most important is not the space of logical possibilities in itself, but the vision of a virtuous agent whose virtue might not even be known to her, and whose knowledge would add little to that virtue. Furthermore, this is a version of a virtue ethical theory where solidity of character in the form of frequency or predictability of actions at best functions like an indirect indication. Virtue is understood as strength or depth of moral concern. (In this particular respect, Arpaly [2002: 94] explicitly endorses McDowell.) "[T]he 'test of time' is only that—a mere test for the depth of concern and an imperfect one at that. Brevity does not make a concern shallow" (ibid., 96). Arpaly's mild "anti-intellectualism" in this respect thereby at the same time opens up for a larger role for conversion as an element in the individual's development.

In Arpaly, then, we find formulated a strong criticism of virtue ethics as a theory of moral agency. Precisely by going further in the direction established by classical virtue ethics, she manages to modify the notion of agency prevalent in virtue ethics. With Arpaly, moral agency has become oblique to itself to a degree unacknowledged (but not *a priori* ruled out) by the Hursthouse approach.

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15   Although the object of her criticism is a different one, the general point about the unrecognised force inherent in one's range of examples is one Arpaly inherits from Hursthouse.

5 No Rest for the Virtuous (ii): The Empire Strikes Back

As implied above, virtue ethics got off the ground not least as a reaction against what some took as scientism on the part of current moral reflection. The scientism had taken the form of allowing the is/ought divide to banish moral philosophy from the realm of objectivity, reducing ethical decision making to expressions of subjectivity. It is no slight irony, then, that the most dramatic undermining of virtue ethics has come from empirical science. In this respect, it is fair to speak both of a "critique of Modernity" and of "Modernity's critique of Aristotelianism."

Perhaps the biggest thing that has happened to contemporary Aristotelian virtue ethics since its initiation fifty years ago, is the dramatic exchange with empirical psychology and sociology stemming from the situationist camp. The single most detailed statement of their case is that of John Doris. The crust of Doris's argument, as carried out in his *Lack of Character*, is the following. Virtue ethicists have argued for, and come to believe in, globalism concerning virtues and personality organisation. In his analysis, mainstream virtue ethics as currently preached generally amounts to the three following claims. Virtues and character are thought of as entailing

1. Consistency of expression or efficacy of a given virtue over a broad range of conditions (courage on the battlefield and across the kitchen table, for instance);
2. Stability of a virtue over time, given repeated "testing;"
3. Evaluative integration between virtues, in such a way that a virtue will be probabilistically related to the occurrence of other virtues, yielding an overall virtuous character or personality.[16]

It is the first of these three characteristics that Doris spends most ink undermining. (That only makes sense, since Doris states he believes in a limited version of [2], while the denial of [1] would make it very difficult to hold on to [3].)

As hinted at already, what sets this approach apart is that it constitutes the culmination of arguments with premises from empirical studies. Doris goes through in some detail famous investigations like Darley and Batson's "Good Samaritan" project, Milgram's authority studies, and Zimbardo's "Stanford

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16   Doris (2002: esp. p. 22ff.). An important precursor to Doris's work is Gilbert Harman (1999: 315–331). A detailed response to Harman's specific arguments was given by Athanassoulis (2000: 215–226). The classic and still much-quoted textbook on situationism is Ross and Nisbett (1991).

prison experiment." What Doris concludes, is that little or nothing in real life attests to the existence of virtues as expounded in standard virtue ethics. There is little evidence, he contends, for the presence of global character traits as efficacious factors in our actions. What in fact correlates with a given type of action is not some deep feature of the agent's personality, but features—generally morally irrelevant, sometimes even highly accidental—of the situation.[17] (Thus the denomination "situationism.") Sometimes, the agent does not even realise what factor in the environment has been the efficacious one.

Here we have a criticism of virtue ethics which undermines the picture of "strained agency" on which standard virtue ethics is built. As with Arpaly, but coming from an avowedly empirical point of view, the result is a questioning of agency that pertains to both motivation (anti-globalism) and cognition (the lack of self-insight).

It makes sense to align Doris's criticism with the MacIntyre approach as we find it in virtue ethics. For although Doris's arguments certainly do move along the axis defined by the Hursthouse approach as well, in that they undermine the idea of ethical agency as a cut and dried affair, it is precisely as situationism that this criticism stands out. It is his situationist stance which makes Doris conclude not only that global character traits are a sham, but that the real source of specification of agency is in a crucial sense the context. As we have seen, this is a type of move that is not entirely alien to "orthodox" forms of virtue ethics, in that something analogous characterises the MacIntyre approach. Where the analogy breaks down, is in the radicality of the thesis that there is

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17   Nomy Arpaly too moves in a situationist direction in this regard, albeit with reference to our everyday experience rather than to evidence from empirical sciences. A focus on the agent's concern to the detriment of a more intellectual tapping of moral wisdom also implies that display of virtue, understood as moral concern and pervasive good ethical will, to a greater extent is seen as varying with one's circumstances. Here, Arpaly (2003: 97) takes herself to be presenting "more intuitive evidence" for much the same conclusions reached by Doris by more empirically minded means (the critical approach to be discussed below). Her example is the deceptively simple one of walking down the hallway of a philosophy department, repeatedly committing what is called "the internal attribution error" of attributing to differences in people's characters what requires no more than differences in their circumstances for their explanation. Talkativeness is not an indication of friendliness or its opposite. "The people least likely to greet one in the corridor are those whose schedules are the busiest, the grouchiest-looking ones are nearing their sixth year as assistant professors, and so on" (ibid). While Arpaly agrees that such evidence amounts to "serious problems for the traditional notion of a character trait", she at the same time suggests its replacement, concluding that "the connection between depth of concern and moral worth is an important truth aimed at by talk of character" (2002: 98).

no such thing as virtues proper, understood as robust and mutually integrated traits of character, even as something constituted and upheld by one or more practices.

6   The Fortunes of Virtue

It has been a main task of this article to display the inner workings of a particular virtue ethical dimension, the problematization of agency, as providing a key to its development from the 1958 opening shot to the present criticism of the very notion of virtue in today's debate. The situationist criticism ups the ante like virtue ethics once did, but goes even further in the same direction. As I hope to have shown, virtue ethics itself was importantly motivated by a desire to take seriously the shortcomings of human agency: the lack of self-sufficiency characterising the individual, and the extent to which virtuous action requires resources beyond what most of us can confidently muster. This is perhaps the most striking feature of the most recent developments as well: the criticism of virtue ethics repeats moves virtue ethics itself once made against existing theories.

Virtue ethics stands apart from other approaches in ethics in that virtue ethics from day one made it a crucial part of its task to analyse what goes on in the agent. That is to say, virtue ethics builds much of its case on descriptive claims about moral psychology. (After fifty years of heated debate with other approaches, those other approaches too have of course come to integrate virtue theories, but accidental furnishings do not make for great argumentative vulnerability.) In a way, then, it is precisely this willingness to include empirical claims about moral psychology as part of the theory that has made the criticism possible.

Although the main task of the present chapter has been to trace the development of this aspect of virtue ethics up to the entry of situationism, something should also be said about the retort of virtue ethics to the situationist claims. Where the latest developments leave virtue ethics once the dust settles, is not yet clear. But situationism is not, after all, the end of virtue, and a variety of new claims and arguments have already made their appearance. The challenge now, as it is interpreted by many, seems to be to acknowledge the rarity, nonexistence, and/or limited theoretical function of virtue in its traditional, robust form, while holding on to or developing conceptions of virtue and character more generally that will ensure them explanatory roles in relation to agency as well as productive roles in ethical discourse more generally.

Strictly speaking, of course, none of the empirical material from the famous research projects typically cited (Milgram, Zimbardo, Darley & Batson) establishes that perfect, virtuous agency does not exist. But they do perhaps indicate quite forcefully that virtue is remarkably rare. Thus, one main virtue ethical strategy, which caters to this (tentatively held) insight, is to stress the role of integrated virtue as a mere ideal.[18] Virtue ethics' contemporary theoretical articulations of ideal agency are just that: they define an origo in our analyses of moral agency as well as in our attempts at ethical betterment, but without any claim to actual instantiation. This means that arguing against the notion of perfect agency by arguing against its existence is committing the categorical mistake of confusing "is" and "ought."

The other main strategy consists in trying to work out a notion of virtue as less unified, but still pervasive and efficient as more than an unobtainable ideal.[19] This is to say that one establishes a less demanding conception of what it means to be virtuous, but without following the situationists in their sweeping claim that the ethical states of individuals are simply more or less irrelevant in explaining (or indeed predicting) the behaviour of individuals. A related logical point here will be that conformity, even when it implies lack of virtue, does not imply lack of character, as seems sometimes to have been presupposed by critics of virtue ethics.

Among the various modified virtue ethical theories of agency, one important suggestion is the idea that our lives and practices are centred around local (rather than global) spheres of action, where each partakes in some, but no one partakes in all—family life, office interaction, battlefield, etc. The demands posed by socialization alone make it questionable whether, e.g., courage as developed in one sphere can reasonably be thought of as a personal quality or competence that will manifest itself when transferred to another sphere, or whether the time limits imposed on human life would make such broad socialisation even possible. That is, virtue might not be global in the strong sense criticised by the situationists. But that is not to say that coming to realise a unity of the virtues in a limited number of spheres must be seen as an unobtainable ideal.[20]

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18   This has been forcefully advocated by Julia Annas in a series of articles; cf. not least her response to Doris in Annas (2005).

19   The second has been wisely elaborated by, e.g., Adams (2006).

20   For a detailed defence of a conception of virtue along these lines, cf. Badhwar (2009: 257–289); Badhwar originally argued for the idea, in a debate with G. Harman (cf. note 15 above) and others, in Badhwar (1996: 306–329). For a clear and critical presentation of the

7   Final Remarks

There is one crucial feature shared by both strategies of defence. This is the rec-
ognition that empirical research has a—limited, and carefully interpreted—
legitimate role to play in philosophical ethics. Perhaps this will remain the
most important result of the criticism's impact: that virtue ethics is now, in a
way it was not before the latest round of criticism, participating in debates that
are systematically influenced by the results of empirical research. This devel-
opment even raises the prospect of future empirical research projects that are
more fully informed about, and designed with a view to, the claims of contem-
porary virtue ethical theories.[21] Such research could prove extremely fruitful to
virtue ethics as a direction in ethics.

If I am to proffer one final suggestion, it is that the recent forms of criticism
may provide the impetus for virtue ethics to transcend itself in the direction of
political philosophy. For it is a striking fact that much of contemporary virtue
ethics has been developed in relative abstraction from serious consideration
of human beings as political animals. While the main historical reference for
Aristotelian virtue ethics saw ethics as embedded in the political sphere, and
his *Ethics* as leading seamlessly to his *Politics*, much virtue ethics has in the
main been going on as if there were no such thing as a specifically political
(as opposed to simply social) background for socialisation, traditions, and
practices.

This development has been both odd and unfortunate. If recent criticism
indicates anything, it is that a remedy for the fragmentation of virtue and the
fragility of human qualities can only be found by looking beyond the single,
unitary agent to the whole or wholes to which she belongs. On a general level,
the potential for such a development is indicated by what I have here termed
"the MacIntyre approach." To the extent that the criticism of virtue ethics has
something going for it, it is precisely to the political frameworks that virtue
ethics should now direct a critical gaze. It is both possible and desirable to

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various notions of virtue and character traits confusing the debate up to the point of its
publication, cf. Kamtekar (2004: 458–491).

21   This is of course not the place to offer a fully-fledged criticism of the empirical research
that has been used against virtue ethics. But it should be mentioned that this dimension
of situationism is often highly problematic. To name only one issue that needs address-
ing: much of the research has involved the use of (amateur) actors rather than figures who
are really in the plight in which they seem to be. It is doubtful that we react identically to
the two sorts of situation. If so, this research tells us not something about how we react
to people who suffer, e.g., so much as it tells us something about how we react to people
who pretend to be suffering.

develop a virtue-focused terminology which allows one to analyse normatively not only singular agents, but the background that defines their space for acting, as well as the complex relations between the two.

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Husserl's Phenomenological Axiology and Aristotelian Virtue Ethics

John Drummond

1

The resurgence of interest in virtue ethics in contemporary philosophy is often traced to the late 1950s and to the work of Elizabeth Anscombe ([1958] 1997) and Philippa Foot (1958, 1958–59, 1961). On Anscombe's view, both deontologism and consequentialism are guilty of judging the "rightness" or "wrongness" of actions on the model of rendering a verdict rooted in one's understanding of the law and an agent's obligations under the law. The fundamental problem for this view is that it is an inheritance of the legalistic claim that the rightness or wrongness of actions is judged by whether those actions conform to law. This claim, in order to preserve the distinction between moral obligation and legal or political obligation, presupposes a nonpolitical legislator, i.e., a divine legislator, whose promulgations demand obedience. However, since modern moral philosophy rejects divine command and religiously grounded natural law theories of morality, the notion of universal, moral laws obligating us has, according to Anscombe, lost the only context that could make it intelligible (Anscombe [1958] 1997: 30–31). It is incoherent, on Anscombe's view, to say that an agent can be self-legislating, that is, that an agent can legislate for herself in a manner that commands the agent (ibid., 39).

The appeal to such legalistic forms of reasoning is the symptom, for Anscombe, of the lack of an adequate moral psychology and an adequate account of practical reason. Her concern in this critique, in other words, is primarily meta-ethical. Her paper is inserted into the meta-ethical debate between cognitivism and non-cognitivism, and she rejects the accounts of practical reasoning associated with the two major normative positions of the day. What is interesting to note, therefore, is that she does not conclude to the truth of the major alternative then available to the accounts of reasoning she finds in deontologism and consequentialism. She does not, that is, accept the non-cognitivist claims of emotivism or prescriptivism as an adequate meta-ethics. Instead, she claims, we must work on articulating an improved moral psychology and must use the term "ought" only in a non-emphatic,

non-moral sense when we cannot just simply replace it with a phrase such as "The charitable thing to do would be x."

We find a similar meta-ethical concern in Philippa Foot's critiques of non-cognitivism in a series of articles from the late 1950s (1958, 1958–59, 1961). Foot argues against various non-cognitivist positions, for example and especially, those of Stevenson (1944) and Hare (1952), and against the so-called fact-value distinction in which these positions are rooted. In so doing, she suggests an alternative moral psychology of the kind Anscombe recommends, a psychology in which reason and feeling penetrate one another so as to produce "factual" evaluations that command assent precisely to the extent that reasons can be given for them. These reasons appeal both to features of the situation, action, or agent evaluated and to the shared understandings of evaluative terms.

The revival of a virtue approach to ethics, in other words, first appears on the scene as an intervention in the meta-ethical debate between cognitivists and non-cognitivists rather than as a normative position. Indeed, textbooks of the time, even Foot's own *Theories of Ethics* (1967), standardly provide accounts of only two normative perspectives, namely, deontologism and utilitarianism. It was not until works such as Peter Geach's *The Virtues* (1977), Foot's *Virtues and Vices* ([1978a] 2002), and, most decisively, Alasdair MacIntyre's *After Virtue* (1981) that virtue ethics identified itself as a third alternative in the debate in normative ethics between deontological theories and utilitarian or consequentialist theories.[1] This third alternative claims that our fundamental moral judgments are judgments about the moral character of agents rather than the rightness or wrongness of actions, and all the thinkers I have so far mentioned took a broadly Aristotelian stance regarding this claim.

It is important to note, however, that both deontological and consequentialist thinkers can provide theories about the virtues and their place in the life of a morally praiseworthy agent—as Kant, for example, did at some length—even if they do not commit themselves to a virtue-ethical normative stance. One might consider, by way of contemporary example, Christine Korsgaard's (1996) discussion of the virtues from a Kantian perspective and Julia Driver's (2001) virtue-consequentialism. It is also possible to develop a normative virtue-ethical position that is not Aristotelian, and here the work of Michael Slote (2001) is prominent. In what follows, I limit my discussion to what can be broadly construed as an Aristotelian approach to the meta-ethical and normative dimensions of virtue ethics. I take this Aristotelian approach to include, first, the view that the emotions are involved in our moral appraisals and

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1   I am grateful to my colleague Christopher Gowans for clarifying for me the two-staged development of contemporary virtue ethics as providing both meta-ethical and normative alternatives to the ethical views dominating in the 1950s and early 1960s.

that these emotions include, but are not reducible to, cognitive content, and, second, the teleological view that the goods to be pursued in action are not to be defined in purely consequentialist terms. I shall ask where, if anywhere, phenomenology stands in relation to the development of contemporary, neo-Aristotelian virtue ethics.

In this context, we may recall that decades before Anscombe's call for a new moral psychology, phenomenological thinkers such as Brentano (1889), Husserl (1988, 2004), Scheler (1913), von Hildebrand (1916), and Hartmann (1926) developed axiological approaches that criticized modern deontologism on both meta-ethical and normative grounds. While there are important differences among their axiologies and their ethical views, all rejected what they took to be the empty formalism of Kantian deontologism, offering an axiological viewpoint wherein the apprehension of "material values" took the place of conformity with a formal law in evaluating and motivating morally laudable action. I shall limit my discussion to Husserl, since I believe that his axiological views are the most promising—and the most Aristotelian—although I cannot argue that view here.[2] My purpose, however, is not to provide an exegesis of Husserl's texts but to borrow and build upon some Husserlian themes in order to reveal how his account of the intentional structure of acts of valuation and volition addresses both the meta-ethical and normative debates involved in the resurgence of virtue ethics and to consider the ways in which and the extent to which phenomenology might provide a basis for a contemporary, neo-Aristotelian virtue ethics.

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Husserl defends a view of ethics as a rational and objective discipline against what he calls "ethical empiricism," which he understands as a form of psychologism that grounds ethics in the psychology of emotion (Husserl 1988: 12). To ground ethics in psychology (or, similarly, in biology), according to Husserl, entails that evaluative terms such as "good" and "bad" would have a merely factual validity; they would refer only to the generally true fact that in a certain historical culture people feel obligated on psychological or biological grounds to act in certain ways (ibid., 13).

Husserl does not thereby deny the empirical dimension of ethics. He denies neither the role that religious and political authorities play in our moral life,

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2   See Drummond 1995, 2002 for more detailed accounts of the relations between phenomenology and Aristotelianism. This paper improves, I believe and hope, the discussion of the relation of Husserl's formal-axiological notions to an Aristotelian approach.

nor the differences between the customs, mores, and moral institutions of different peoples and different times, nor the conditioning of our moral capacities by our psycho-physical constitution and our place within the causal nexus of the physical world. But, for Husserl, the fact of these empirical factors in our ethical life is not sufficient to justify the claim that ethics is an empirical science, for these factors affect only how ethical principles are particularized in different circumstances and the ethical practices in which they are realized.

On Husserl's view, the theoretical part of ethics must be an *a priori* science if ethics is to provide principles having a genuinely normative force. In response to questions about how rationally to shape one's entire life as a good life and to attain happiness (*Eudaimonie*) or blessedness (*Glückseligkeit*), Husserl speaks of the need "to define a system of absolute and pure principles of practical reason which, free from all reference to the empirical human and its empirical relations, ought to take over the function of providing an absolutely normative standard for all human behavior, *whether these standards are only formal or also material*" (Husserl 1988: 11, my emphasis). This hardly sounds like a critique of Kant! But I should note immediately that this quotation refers us to the two dimensions—material and formal—of Husserl's ethical views. These two dimensions are intertwined in a way that differs strikingly from Kant.

Let us focus our attention for a moment on the formal dimension. It comprises what Husserl calls "formal axiology" and the "formal theory of practice." Husserl conceives of these two formal disciplines as analogous in the axiological and practical spheres to formal logic in the theoretical sphere and as comparable to logic in their rigor and universality. Hence, their function is to (1) identify the possible forms of simple axiological and practical judgments as well as those compound forms wherein axiological and practical judgments are brought into conjunctive, disjunctive and hypothetical relationships; and (2) identify the laws governing consistency relationships among our axiological and practical judgments so as to ensure consistency in our moral beliefs and practices. When a law claims that we must do something in order to achieve some good, the necessity here is not logical or physical. The law asserts that a rational person, given a desire for that particular good, ought to do that thing. The law asserts that not to do that thing, given the desire for that good, would be irrational.

Surprisingly, perhaps, the main force of these discussions of formal axiology and the formal theory of practice is not meta-ethical but normative. We have already seen that in stating the need for these formal sciences, Husserl uses the teleological notions of "happiness" and "blessedness," but it is not entirely clear whether he uses them with their consequentialist or areteic meaning. His discussion of particular formal laws, however, helps to settle this issue.

Husserl's formulation of the first, formal law of morality—his categorical imperative, as he calls it, whose formulation he borrows from Brentano ([1889] 1902: 12)—is "Choose the best among attainable ends." Husserl states this law more objectively as "The best among what is attainable in the total practical sphere is not only comparatively the best, but the sole practical good" (Husserl 1988: 221). His concern, in other words, is, contra Kant, not with the mere form of a legislating reason. From the beginning there is a material dimension—the best attainable—proper to Husserl's categorical imperative. Other laws that he cites make clear that Husserl conceives the "best among what is attainable" as the maximization of the sum of goods available in a situation. For example, in the axiological sphere, Husserl presents us with laws governing the comparison and summation of value (ibid., 90ff.; cf. also 132). In the practical sphere, his "law of absorption" requires that in choosing an action we order that action to the best of the goods attainable—the highest and most comprehensive good— and that the best absorbs all other goods under it (ibid., 145). Husserl's discussions of such laws support a view of him as an idealized consequentialist.[3]

The reference to the material content governed by these formal laws is reinforced by the analogy between these formal sciences and formal logic. Just as the pure logic of consistency or non-contradiction must be supplemented by an account of the soundness of arguments and, therefore, of the truth of their premises, the formal axiological and practical sciences must go beyond formal consistency to evident and rationally insightful judgment in the axiological and practical spheres. We find an account of such axiological and practical judgments in Husserl's phenomenological descriptions of evaluative and volitional experience. From this aspect of Husserl's thought, we can, I believe, draw a more adequate phenomenological response to both the meta-ethical and normative questions at work in the resurgence of an Aristotelian-style virtue ethics.

3

Husserl's phenomenological accounts of evaluation and volition seek to address, as he puts it, the "conflict between a morality of the understanding

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3 Christopher Arroyo 2007 has clarified for me the consequentialism of Husserl's axiological and practical laws. See also Melle 1997. Husserl's use of notions such as *Eudaimonie* and *Glückseligkeit* seems to fail to distinguish adequately between consequentialist and areteic versions of teleology.

(*Verstandesmoral*) and a morality of sentiment (*Gefühlsmoral*)" (Husserl 1988: 251). In other words, Husserl seeks to address the meta-ethical problem concerning moral experience and its relation, or lack thereof, to reason. Those who argue that moral beliefs and judgments are rooted exclusively in reason Husserl calls "intellectualists" (*Verstandesmoralisten*) and those who ground moral beliefs and judgments exclusively in the feelings or sentiments Husserl calls "emotivists" (*Gefühlsmoralisten*). Husserl strikes a middle ground; his descriptions provide an account of evaluative and volitional intentionality that clarifies how understanding and emotion jointly function in the axiological and practical spheres.

I begin with valuation. Husserl claims that value-attributes are at root the correlates of feelings and episodic emotions that are the affective response of a subject with a particular experiential history—that is, particular beliefs, emotional states, dispositions, practical interests, and so forth—to the non-axiological properties of an object or situation. This claim should be understood against the background of a distinction between two senses of "feeling": feeling-sensations and intentional feelings (Husserl [1984: 401–10] 1970: 569–75). The former are merely sensory experiences, for example, the visceral feelings such as the tightening of the abdominal muscles associated, say, with anger. Intentional feelings, on the other hand, refer to something as their object. So, for example, liking and disliking are the liking and disliking of something; joy and sadness are joy and sadness in something, and so forth. The objective reference of the feeling or episodic emotion is derived, however, from an underlying presentation. That is, the intentional feeling or episodic emotion necessarily contains within itself a moment that presents the object with certain non-axiological properties.[4]

In responding affectively to these non-axiological properties, the subject both has sensations of pleasure and pain and an intentional feeling or episodic emotion (approbation or disapprobation, loving or hating, fear or excitement) that presents the affective aspect of—and thereby values—the object. I should note, first, that the feeling-sensations and the intentional feeling need not have the same valence. In rehabilitating my surgically replaced knee, for example, I feel sensations of pain in response to certain movements of my leg, but I nevertheless positively appraise those movements insofar as they serve the end of rehabilitation. My intentional feeling, in other words, is a feeling of (non-sensuous) pleasure at advancing the rehabilitative project. I should

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4   Although more complicated cases wherein the feeling or emotion is rooted in another axiological property are also possible, these in turn will point back to simpler apprehensions of an object's or situation's non-axiological properties.

note, second, that an episodic emotion is distinguished from a simple intentional feeling in this context insofar as it intends in a more determinate way the affective aspect of an object or situation; fear, for example, apprehends a situation not merely as unlikable but as dangerous. The intentional feeling intends a thin axiological attribute; the episodic emotion intends a thick axiological attribute.

The value-attributes intended are neither separate from nor reduced to the non-axiological properties on which they are founded,[5] but our valuations—precisely insofar as they are grounded on cognitive presentations—track these non-axiological properties. Conversely, the non-axiological properties provide evidence for the valuation accomplished in the affective response. The intentional feeling or episodic emotion experienced by the subject is, in other words, justified (or not) by the non-axiological properties underlying it, and the feeling or emotion is "right" or "appropriate" when it is justified and when the underlying apprehension of the non-axiological is itself both true and justified. Modifying somewhat a suggestion of Mulligan (1998), we can say,

> (a) *E* is an intentional feeling or episodic emotion whose base p is either a perceptual (or memorial or imaginative) or judgmental presentation (or representation) of an object *O* and its non-axiological properties.

Stipulating that

> (b) "justification" in this context means prima facie, non-inferential, and defeasible justification,

then,

> (c) *E* is a feeling or episodic emotion appropriate to *O* and its non-axiological properties *x, y*, and *z* if and only if
>
>> (i)   *p* is a veridical or true presentation (or representation) of *O* and of its properties *x, y*, and *z*, and
>> (ii) *p* is justified, and
>> (iii) *p* is a reason for or rationally motivates *E*.

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5   To say that *B* is founded upon *A* is to say (i) that *B* presupposes *A* as necessary for it and (ii) that *B* builds itself upon *A* so as to form a unity with it.

Since the intentional feeling or episodic emotion is founded on cognition, it can go wrong in two distinct ways. First, the underlying presentation can be false or unjustified. Conditions (i) and (ii) jointly address this possibility, ensuring that *p* is both true and justified. To say that *p* or any cognitive intentional content is justified means that it is directly presented to consciousness in a perception—a seeing of *O as x*—or a categorial modification of perception—a seeing *that O is x.*

In the case of the moral evaluation of actions, the evaluative moment is complex. I must evaluate both the ends sought in the action and the conduciveness of the action to those ends as well as to any other ends that might be realized in the situation. I might, for example, evaluate a supervisor's angrily shouting at an employee in a conversation evaluating the employee's work as rude. My evaluation is immediately grounded in my directly witnessing the shouting behavior or hearing about it from someone whose testimony is reliable. The behavior rationally motivates my adverse affective response (say, shock or indignation); it is a reason for my felt indignation and the negative evaluation of the shouting behavior.

This evaluation is possible, however, only to the extent that I have some understanding of what a conversational situation entails and that I have some conception of "rudeness." That is, certain behaviors or reactions or states are tied as part of their meaning to this conception of rudeness and to a negative evaluation. For example, conversations need not be conducted at a volume higher than that necessary for the interlocutors to hear one another. A conversation involving a higher volume is inconsistent with what the nature of conversation entails (as, of course, are many other behaviors, e.g., intentionally speaking falsely in order to mislead), and to resort to the higher volume does not conduce to realizing the ends of conversation. Shouting is not the kind of thing done when conversing with another.

In experiencing the shouting, then, I immediately recognize the action as rude and disapprove of it. This indicates that the evaluative moment is rooted in the underlying cognitive dimension and so thoroughly united with it such that it is a "matter of fact" that this shouting behavior is rude. Anyone who fails to recognize it as rude is mistaken and suffers from a misconception of what constitutes polite and rude behavior. Experiencing and negatively evaluating the action as rude is based on the features intrinsic to the behavior itself and the ordinary expectation we have about the behaviors appropriate to different kinds of human transactions. The motivation for the "thick" evaluation of the shouting as rude involves a sense of what features define appropriate behavior and the recognition that the behavior directly experienced conflicts with

these features. The general sense of appropriate behavior is established and modified over time in the light of our untutored, "thin" affective responses and the education of the attitudes and emotions that occurs within the communities to which we belong.

Condition (iii), then, addresses the motivation of the affective moment of the emotion, the valuation of the action as rude. There are instances, of course, when the underlying cognition p is true and justified and the emotion, while motivated by p, is nevertheless unjustified and inappropriate. Someone might, for example, have a fear of heights and refuse to go out on an observation deck she knows to be safe. She truly and justifiably grasps the non-axiological features of the situation and knows it is most unlikely that she will fall, but she nevertheless fears going out on the deck. This fear might, in one respect, be perfectly intelligible. She might have fallen from a height previously and suffered severe injuries. Nevertheless, she might in this case recognize that her fear is unjustified and inappropriate; indeed, it is perhaps even likely that she will recognize this.

It is the affective dimension of the experience itself that accounts for this recognition. Our fearful person might, for example, be embarrassed at refusing to go out on the deck. Her self-awareness, in other words, has its own affective and evaluative moment. In fearing to go out on the observation, she is also aware of herself as experiencing fear. In response to this self-awareness, she might be embarrassed about her fear. Her embarrassment about her fear is a negative appraisal of it, and it highlights the fact that one aspect of her knowledge of the situation S—that is, that the observation deck is safe—fails to justify her fear even as another aspect of her knowledge of S—that is, the observation deck is high—motivates it. Hence, there is another justificatory dimension to the evaluative experience beyond conditions (i) to (iii). This one, however, is an intrinsic, originally pre-reflective dimension of conscious life, and it can be stated as follows:

> (iv) E is a reason for and motivates F, a (pre-reflectively or reflectively) self-assessing feeling or emotion (such as approbation or pride) that positively appraises E.

Finally, we should add as a requirement for an appropriate feeling or emotion, the condition

> (v) no relation of justification mentioned is defeated.

4

As valuation is founded on presentation, so desire and volition are founded on valuation. This is why it is so important to Aristotelians that virtue is not only the disposition to act in the right way and for the right reasons but also involves having the right attitudes. If we represent the structure of the valuations involving feeling or emotional episodes as

> (1) S values $[(O$ as $x)$ as g (i.e., as good)$]$ on the basis of re(presenting) $(O$ as $x)$,

then we can represent the volition grounded in this valuation as

> (2) S effectively chooses (that is, performs) action A [in the light of end G] on the basis of desiring $(O$ as $x)$ on the basis of valuing $[(O$ as $x)$ as $g)]$ on the basis of representing $[(O$ as $x)$ as realizable in action] while presenting $(O$ as not-$x)$.

Assuming for the moment that A is a justified action, (2) represents the Aristotelian ideal of the virtuous person whose beliefs and judgments about good ends and what actions conduce thereto are true, whose attitudes are appropriate, whose actions are right, and in whom there is no conflict between what the agent knows and what the agent feels and desires. S in this case knows the appropriate ends to be sought in action and acts in a manner conducive to those ends without occurrent deliberation.

Aristotle, as we know, distinguished the virtuous person from the continent, incontinent, and vicious persons in terms of how the different moments in action are related to one another. In what follows, I represent some of these alternatives, along with other possibilities, in a way that helps illuminate the manner in which a phenomenological account of valuation and volition might move toward Aristotelianism:

> (3) S effectively chooses A in the light of end G (versus end H) on the basis of preferring $(O$ as $x)$ to $(O$ as $y)$ on the basis of valuing $[(O$ as $x)$ as $g]$ on the basis of representing $[(O$ as $x)$ as realizable in action] while presenting $(O$ as not-$x)$. $(O$ could be presented either as y or not-y, but this is not important to the example; in the latter case, O would also have to represented as y. The focus of the example, however, is on the situation to be realized by A.)

This case might be understood in two different ways. On the one hand, *S* might be disposed to value *G*, but the situation is such that by focusing one's attention on different non-axiological features, different goods to be achieved come to the fore. *S* recognizes that casting the situation in one way is preferable to casting it the other way because it involves an end *G* that is more valuable to pursue than the merely apparent or lower good *H*. In this case, *S*, a virtuous agent, is tempted to perform an action that allows a bad or worse situation to arise or endure, but her virtue defeats the temptation. The presence of the temptation means that *S* must deliberate about the competing ends as well as about the action that best conduces to the chosen end. On the other hand, *S* might not be ordinarily disposed to value *G* or to do the right action. Torn between the two choiceworthy ends, she nevertheless recognizes that *G* is the higher good and desires its realization. Hence, in this case *S* acts like the virtuous agent acts, but she does not act from virtue.

Both these cases are different from Aristotle's continent agent who has true knowledge of the proper ends of action but acts against her desires or inclinations. We might represent this agent as follows:

> (4) *S* effectively chooses *A* in the light of end *G* (versus end *H*) on the basis of valuing (*O* as *x*), while preferring (*O* as *y*) to (*O* as *x*), all this on the basis of representing [(*O* as *x*) as realizable in action] while presenting (*O* as not-*x*).

These phenomenological characterizations point to a model of moral decision-making as the activity of weighing competing goods or apparent goods and the actions conducing to them in a deliberative activity that is either occurrent or that has been accomplished over time in such a way as to dispose the agent toward a certain kind of action. As various judgments and valuations are made and confirmed, they become convictions of the subject that inform subsequent judgments, valuations, and volitions. These habitualities, as Husserl calls them, make up our dispositions to expect certain features in certain kinds of situations, to pick out what is morally salient in those situations, to have certain kinds of attitudes toward them, and to act in determinate ways. This is just the kind of dispositional state that Aristotle has in mind when he speaks of virtues as states or habits or dispositions to have the right attitudes and to act rightly and from the right reasons.

This model of practical reason is very different from that which sees moral decision-making as rendering a verdict about an action's conformity to law. Even in cases where one experiences a felt demand to act in a certain manner,

that felt demand is in response to understanding something as a good over-riding (at least in the situation in which the action is to occur) other goods or apparent goods. Moreover, it is not merely the case that deliberation involves two goods, where the pursuit of one of those goods would clearly enough be wrong. Much more important, and much more interesting, are those cases where the deliberation involves weighing competing goods when the com-peting goods are genuine goods to be realized in the situation, as when the requirements of kindness and honesty to a friend force careful deliberation about how to tell one's friend what honesty requires when doing so can cause the friend great pain. Moral deliberation requires that we find the right bal-ance between what honesty requires where kindness is appropriate and what kindness requires where honesty is needed, and not merely that we choose one good to the exclusion of the other and certainly not that we render a verdict concerning whether the action we propose to take conforms to universal law.

5

Agents pursue goods for themselves and others in particular historical and cultural contexts. Hence, there is bound to be some variation in defining the goods to be pursued and in ranking them in appropriate preferences. Indeed, competing goods might be ranked differently even by the same agent at differ-ent times without any contradiction. In some periods in life, for example, an agent might devote more time and concern to realizing the goods of parent-ing, whereas in different periods that same agent might devote more time and concern to realizing professional and career goods.

The experiences I have described nevertheless have a notion of truth proper to them. There is the truth or veridicality that belongs to the underlying pre-sentation. There is the appropriateness of the evaluative moment involved in action, and there is as well the rightness of an action conducing to an appro-priately valued end involved in the deliberative and volitional moments. The virtuous agent is the one who correctly grasps and assesses situations, who has properly appraised ends and has appropriately ordered her preferences among them, who has deliberated well about what actions conduce to what ends, and who effectively chooses the right action for the circumstances. For such an agent, it is important to note, following the example of the *phroni-mos* is insufficient. The virtuous agent lives self-responsibly, judging, valuing, and deciding for herself rather than passively accepting received attitudes and opinions. The virtuous agent, in other words, in acting in the pursuit of true goods for herself and for others also realizes the goods of thinking well, feeling well, and acting well—what we might call the goods of agency.

The goods of agency are realized in the performances of subjects whose cognitive, affective, and volitional experiences disclose the world as morally ordered. The cognitive and affective experiences are confirmed as truthful and appropriate, and the volitional experiences are fulfilled in action. Insofar as the goods of agency are realized in an agent's making moral sense of the world as she straightforwardly pursues what is good for herself and others, we might also call them second-order goods. They are necessary conditions for the possibility of virtuously pursuing goods for oneself and others in our everyday activities. An agent seeking to live a self-responsible life in which she decides for herself what to think, to feel, and to do must, therefore, effectively—even if only implicitly—choose these goods of agency in the virtuous pursuit of goods for oneself and others.

Thinking well, feeling well, and acting rightly arise only in inter-subjective contexts. The apprehension of moral goods, decisions about how best to realize those goods, and evaluative judgments about our own actions, the actions of others, and social practices and institutions all arise against the background of a common knowledge embodied in our collective determinations of choiceworthy goods and praiseworthy actions. This common knowledge—our notion of rudeness, for example, or kindness or honesty—is passed from one generation to the next by means of the stories we tell young people, the songs we sing, the practices we adopt, the laws we write, the institutions we establish, even the games we play. Moreover, it continues to be worked out, criticized, reappropriated, and modified within successive generations in our encounters with one another, with those whose opinions or reasoning might differ from our own. Our own opinions and beliefs must be tested against the opinions and beliefs of others. Only in coming to grips with differing opinions and beliefs can we truly be said to come to know ourselves as a person holding certain convictions that have withstood a certain kind of testing. In other words, one does not and cannot think or reason rightly by oneself. In order to realize the goods of agency for oneself, one must think for oneself, but since one cannot rightly think by oneself, these goods of agency must be effectively chosen for others as well as for oneself.

Consequently, there is a class of goods—the goods of agency organized around the notion of thinking, feeling, and willing rightly—as well as a set of behaviors and practices ordered to the realization of these goods that are necessarily, albeit implicitly, chosen by the virtuous agent insofar as that agent pursues any goods at all. This entails some special cases of preferring, wherein

> (5) S prefers T (a second-order good of agency) as necessarily g over against G (a first-order good for the agent) as g.

Moreover, the recognition of these goods of agency as necessarily willed transforms our understanding of the goods for an agent and of rightly ordered volition. The first-order goods for agents and patients are now apprehended as necessarily transformed by and yielding to the second-order goods of agency. For example, in exercising honesty and kindness toward a friend who is about to make a seriously flawed decision that might cost her her job, one might be honestly abrupt with one's friend in order, as it were, to save her from herself. But one might also offer advice in a bullying way so that one's friend begins to feel coerced in her decision. The effect of one's bullying honesty, no less honest because bullying, would be to limit the friend's autonomy to decide for herself about the best course of action. This would be to place both a good for the agent (one's own honesty) and the good for the other (the friend's keeping her job) ahead of the other's good of agency (autonomy, i.e., authentically or self-responsibly thinking for herself). Recognizing the necessity, however, of the goods of agency for the pursuit of goods for both the agent and the patients of the agent's activities, one's sense of honesty is refined to the point that one recognizes that honesty with a friend cannot truly be thought of in such a way that it would permit denying one's friend the autonomy to make up her own mind and to choose for herself. Similarly, in the case of rudeness mentioned earlier, the shouting is seen not merely as violating what achieves the ends of conversation but as also intimidating and belittling the employee. The shouting is deemed wrong both because it fails to conduce to the ends of conversation and because it fails to respect the employee who, as a fellow moral subject along with me and others, makes moral sense of our shared world.

Stipulating, then, that

> (d) *V* is an effective volition that issues in action *A* as conducive to end *G* and whose base is *E*'s evaluation of *G* as a good end,

we can say:

> (e) *V* is rationally justified and *A* is right if and only if

> > (i)   *E* is appropriate;
> > (ii) *E* is a reason for or rationally motivates a desire for *G*;
> > (iii) *G* is a reason for or rationally motivates *V*;
> > (iv) *A* conduces to *G* as an internal or external consequence;
> > (v)   *A* does not frustrate (or frustrates least) the realization of necessarily valued second-order goods of agency; and
> > (vi) no relation of justification entailed is defeated.

6

Phenomenological descriptions reveal important truths about essential features of the transcendental dimension of the human. In this respect, the phenomenological approach goes beyond an Aristotelian naturalism to acknowledge the transcendental dimension of the human as an agent that makes moral sense of the world and whose "making sense" is teleologically ordered toward truth in its cognitive, axiological, and practical guises. This provides the basis for identifying second-order human goods and the virtues appropriate for realizing them, and it is consistent with differing accounts of first-order goods and the virtues appropriate for realizing them.

The appeal to second-order goods of agency grounds both Aristotle's claim that some actions are always and inherently wrong and Kant's claim that we should not make an exception in our own case. Our sense of being obligated by certain goods—whether first-order goods, like the goods realized in the pursuit of a vocation, or second-order goods, like the other's autonomy in thinking, feeling, and willing—arises only in weighing competing goods realizable in the situation in which we are called upon to act. The competition arises precisely to the extent that we are faced with competing desires and must choose in favor of the true good or higher good in a way that forces us to override certain desires we have for merely apparent or lower goods.

A phenomenological approach to moral experience rooted in the description of the material dimensions of evaluative and volitional experiences yields, therefore, a view compatible with Aristotelian and neo-Aristotelian approaches at both the meta-ethical and normative levels. First, we see repeated in Husserl's axiology the Aristotelian meta-ethical views that the emotions have cognitive content and pick out what is morally salient in a situation and that the moral agent develops habitualities of thinking and feeling, habits of acting, and dispositions to have the right attitudes and to act rightly. Second, the axiology sketched herein affirms the Aristotelian normative view that there is a teleology—a *eudaimonia* or flourishing—proper to reason: the teleology of thinking, feeling, and acting rightly. Moreover, this view focuses our fundamental moral judgment on the self-responsibility of the agent in determining for herself the truth of her beliefs, the appropriateness of her attitudes, the correctness of her deliberations, and the rightness of her actions. The fundamental normative judgment pertains to the character of agents rather than the rightness or wrongness of a particular action, and it is this overriding good of agency in terms of which we can best think about the virtues appropriate for the flourishing human life.

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Husserl's Ethics of Renewal: A Personalistic Approach

Sara Heinämaa

In the early 1920s, Edmund Husserl published a series of essays on renewal (*Erneuerung*) in the Japanese journal *Kaizo*, discussing human life, its goal-directed, teleological nature and its possibilities for self-regulation. Husserl focused on the problems of individual transformation and social-cultural development and argued that human life should not be modelled on biological life. There is a crucial difference between human action and animal behaviour, according to Husserl, but this difference is not material, it is structural and based on the reflective potentials of human beings. In other words, human life and animal life include similar elements, such as drives, needs and feelings, but these moments can become objects of reflection and critical inspection only within human life, and can thus receive a rational justification.[1]

In the *Kaizo* essays, Husserl argues that to reach the highest form of life requires that we learn to reflect critically on our lives as wholes and all the elements included in them: our volitions and actions, but also our acts of thinking and valuing, desiring and feeling (Hua 37: 247–253). He sees all types of intentional acts as objects of ethical reflection and cultivation, so not just practical actions and volitions, but also all axiological acts of feeling and desiring and our theoretical acts of believing and thinking, and in this respect he is nearer to Aristotle than to Kant. On the other hand, Husserl's ethics is part of his transcendental phenomenology, parallel with logic and epistemology. Thus, a comparison to Kant's approach is illuminative and helps us to see the special strength of Husserl's approach among late modern philosophies of the good life.

My aims are twofold. First, I will explicate Husserl's idea of ethical life in distinction from the other possible types of human life. Second, I want to discuss the personalistic emphasis of Husserl's approach and the secondary role that the other person has in it. My claim is that even if Husserl gives the other person a central place in all the human forms of life that he discusses,

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1 For a detailed discussion on the biological and organic models of human life, see Miettinen 2013.

his concept of ethics is personalistic in the sense that it defines ethical life by self-responsibility and personal happiness (*Glückseligkeit, eudaimonia*) and not by reference to any duties or obligations that we have to others.[2] But even more interestingly, Husserl's mature reflections on the human good parallel with late Stoic ethics in an important respects: both share a strong emphasis on the human person and her exceptional relation to her own life as a whole. Richard Sorabji's investigations into the Stoic tradition are especially illuminative in this respect. In *Self: Ancient and Modern Insights about Individuality, Life, and Death* (2007), Sorabji argues that with Panaetius, Epictetus and Cicero the Stoic tradition developed a new emphasis on the unique individual and her veridical relation to herself. What was debated and rethought by these later Stoics was not merely the sense and role of rules (*regula*) in ethics or the relation between the particular and the universal but more innovatively the special relation that a rational being has to herself and to her own life as a whole: "the Stoics differ from Kantians in the restrictions on their reliance on the rules and in their interest in exceptions that do not always fall under rules. But the particular need to be true to your self, and in cases where the self is unique, is a special case of this attitude" (Sorabji 2006: 165, cf. 2–3, 7–8).

My aim in this essay is to clarify Husserl's understanding of ethical self-awareness. I do this in the interest in preparing for a detailed comparison between Husserl and the late Stoics and thereby opening broader perspectives for post-Kantian philosophy of good life.

The personalistic emphasis of Husserl's mature ethics does not mean that topical questions concerning the self-other relation or intersubjective life would be external or marginal to his approach; on the contrary, the *Kaizo*-essays demonstrate that Husserl saw intersubjective life as a central topic in ethics.[3] Moreover, as all objectivity is based on transcendental intersubjectivity (e.g. Hua 1: 149ff.), also objective values and objective goods rest on this foundation. However, despite this multidimensional importance of intersubjectivity I want to argue that Husserl's approach is personalistic in that he defines ethical life by reference to the spiritual activity of the person, by reference to the concepts of self-responsibility and self-shaping (*Selbstgestaltung*), and not by reference to any concepts of the other.

What proves to be crucial to Husserl's mature understanding of ethics is the openness and incompleteness of a person's spiritual life. For him, ethical

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2 Cf. Melle 2007. Husserl personalistic approach is most often associated with that of Fichte (see, e.g., Peucker 2008). My interest here is not to take a stand on the historical relations of influence but to prepare for a systematic comparison between Husserl and the late Stoics.

3 Cf. Miettinen 2013: 153ff.

renewal does not primarily mean reforming or reinterpreting one's relations to others—human or divine—but questioning and transforming one's relation to oneself. This Husserlian idea, I believe, can be strengthened by comparisons to the late Stoics; and, on the other hand, Stoic-inspired approaches can be updated and developed further by Husserlian insights.[4] But all such developmental work remains a task for later investigations.

1   Self-Regulatory Lives: Professional, Vocational and Ethical

In the *Kaizo*-essays, Husserl defines his concept of ethics by distinguishing ethical life from three other forms or types of human life: natural life, professional life and vocational life.

In other words, Husserl distinguishes between four different forms of life, and correspondingly between four different types of valuing: first, simple *natural* life which strives for sporadic goods and goals; second, *professional* life directed by freely chosen goods; third, *vocational* life dedicated to comprehensive and overarching values; and fourth, *ethical* life with universal values. In order to understand Husserl's concept of ethical life and its universality, we need to study also the three other types.

The simplest type of life is that of an animal. This covers both human animals and non-human animals. Animal life is determined by context-bound and circumstance-bound values that direct individual actions only sporadically and without any free decision or commitment by the agent. The values and goals in this case are determined by the drives and needs of the animal. In the case of human animals, life is determined by original inclinations and by acquired inclinations as well as by habits and customs. No value is freely chosen, but all are merely passively adopted (Hua 37: 239–240; cf. Hua 4: 269–270/281–282).

The three other types of life—the professional, the vocational and the ethical—depend on our self-conscious and self-reflective capacities. Due to the capacity of self-reflection, humans are able to judge and evaluate their own actions, motives and goals, as well as their characters and their lives as wholes and to decide about their future course on the basis of such deliberation. Self-reflection discloses human life as an incomplete whole and as permanently open to future possibilities (Hua 27: 30–31; cf. Husserl [1923] 1997: 207–208, 212).

4   It seems to me that Sorabji's critical argument against Kantianism is weakened by his dismissal of the other resources that the Cartesian tradition provides and by his one-sided focus on Sartre's phenomenology of self-awareness.

A human being is able to understand her life as such and to study and evaluate its course, its goals, its successes and its failures. What is specific to her is not just the capacity to choose and decide freely for herself, but also the necessity to choose and decide about the course of a life which has no natural ending.[5] These interests and capacities make possible three complex relations to values and goals: the professional, the vocational and the ethical.

Husserl's distinction between these three types of human life—professional, vocational and ethical—is a distinction between three forms of self-regulation. So ethical life belongs together with professional and vocational life as one particular type of self-regulatory life and it differs from the two other types of self-regulation by certain internal characteristics. I will study these three types separately and explicate their distinguishing features.

Professional life is the simplest type of self-regulative life. It is directed by freely chosen ends and goals, and its systematic regulation covers the life of a human being as an open-ended whole. Being motivated by a concern for the future, a person chooses a profession which will guarantee the management of material subsistence and wellbeing for her, and for her near ones (Hua 27: 27).[6] An example of this type of self-regulation would be the life of Franz Kafka, who decided on the profession of a clerk both on the basis of family traditions and for economic reasons.[7] By means of this decision he did not, however, dedicate his life to the furthering and cultivating of the activities of his profession but instead devoted his life to the art of writing fiction.

In a *vocational* life, a person does not just choose a profitable or satisfying set of values to guide his actions but chooses a set of values that best suit his abilities and capacities and that open up a life of self-realisation and constant

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5   Husserl argues that only human beings are *persons*, that is, not just agents or subjects of actions—as are also many animals—but, more significantly, agents that see themselves as subjects of an open life horizon. Death for such subjects is not a natural end point of life, but is an *interruption*. In other words, human death is not the final moment of human life. Rather it is always given and included in human life as "a threat [*Drohung*]," a constant threat, that remains and never comes to an ending (Hua 27: 99). This idea is developed further by Martin Heidegger in his much discussed concept of being-toward-death (Heidegger [1929] 1993, §46–53, §60 §72; cf. Heidegger [1925] 1979). For a more detailed discussion of the phenomenology of life and death, see, Heinämaa 2010.

6   Cf. Hannah Arendt's concept of work in her three-fold distinction between labour, work and action in *The Human Condition* (1958). For an explication, see, Heinämaa 2010: 128–136.

7   Cf. Bernard Williams's concept of *internal reasons* and his example of Owen Wingrave, a Henry James character (Williams 1981: 106).

happiness.[8] She is convinced—insightfully certain (*einsichtig gewiss*)—that certain values are necessary for her as a person[9] and that she needs to strive for them, and thus she decides to dedicate her life unconditionally to the pursuit and realisation of these values (Hua 27: 28; cf. Hua 4: 265–268/277–280). In short, a person does not just choose her vocational values freely but also identifies with them. Husserl calls such values "genuine" values.

A comparison with Harry Frankfurt's concept of care illuminates Husserl's idea of vocational life. In *The Reasons of Love* (2004), Frankfurt argues that the mere concepts of moral value and valuing, as well as those of desire, belief and intention, are inadequate for ethical purposes because they cannot distinguish between the lives that we choose to live and the lives that we want to avoid. In order to decide between different life options, we need to be able to see some values and goals as crucial to our persons and to our personal lives. Frankfurt calls "caring" the activity which identifies certain values as specially important or significant to us, and thus separates these values from the values that have objective validity as well as from those that we pursue merely sporadically (Frankfurt 2004: 11–12). The function of caring is to bring volitional unity, coherence and structure to our lives; but even more importantly it "connects and binds us to ourselves" (Frankfurt 2004: 17).

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8   Husserl uses the German term "berufsmässig" for the idea of professional life as well as for the idea of vocational life. However, he makes a conceptual distinction between professional and vocational by pointing out that professional life can be lived in two different ways or in two different senses: in a lower and improper sense, and in a higher and proper sense (Hua 27: 28). Professional life in the proper sense, i.e. vocational life, is a life in which a person chooses her profession freely in accordance with her individual interests and capacities and not because of external reasons, i.e. reasons external to her personal life.

9   Husserl's concept of ethical life depends on his concept of person which is rich and covers all moments and layers of the spiritual life of an individual. In the second volume of *Ideas*, Husserl defines the person as a system of capacities—bodily and spiritual, passive and active (Hua 4: 253–255/266–267). Several commentators emphasise Husserl's idea of the person "in a higher sense," i.e. the person as an agent of free acts of reason, and see this as the main topic of his ethics (e.g. Hart 2006: 226–227; Beyer 2007; Peucker 2007; cf. Hua 4: 255/267, 268–269/280–282, 276/289). Husserl, however, argues that the person is not just an agent of self-reflective, free acts, but is also a subject of habitualities and "blind" drives (Hua 4: 255/267, 276–280/288–293). In this perspective, I would argue that the crucial reforming function of free acts of reason is misunderstood if these acts are studied in abstraction from the pre-reflective, operative intentionality and the passive elements of our lives, i.e. in abstraction from habitualities and drives (cf. Hua 4: 252/264, 270–280/282–293). On Husserl's concept of person as a system of capacities, see Beyer 2007; on the transcendental aspects of his concept of person, see Heinämaa 2007; on Husserl's philosophy of drives, see Smith 2010.

Life structured by care, as Frankfurt defines it, is very similar to vocational life in Husserl's description: It is established by a personal commitment to certain values, a commitment which depends on our personal constitution and on our reflective capacities (Hua 27: 252; cf. Hua 4: 254–255/266–267). This commitment institutes an ordering and a hierarchy of the values that we have encountered and posited; it covers life as a whole and brings coherence and unity to our actions and intentions.

As examples of vocational life with genuine or over-arching values, Husserl gives the life of the artist and the scientist or the philosopher. He explains:

> So art is a vocation for the genuine artist, and science is a vocation for the true scientist (the philosopher); it is a field or region of spiritual activities and accomplishments, for which she knows that she has a calling, so that only the pursuit of these goods can give her the most "inner" and most "pure" satisfaction, and each succeeding can give her the consciousness of "happiness" [*Seligkeit*]. (Hua 27: 28; cf. Hua 37: 245–246; see also Donohoe 2010: 129)[10]

Janet Donohoe (2010) discusses motherhood as another example of vocational life and describes the decision to adopt a vocation as follows:

> A vocation is determined according to a personal feeling of love for a particular realm of value, for instance academic philosophy, or motherhood. This realm of value is not necessarily one which is recognized by others as valuable nor does our choosing it create of it a realm of objective values as Brentano might have it. In choosing a vocation according to our own love for a realm of value, we can each claim an authentic life. (Donohoe 2010: 129; cf. 2004: 157–160)[11]

In certain circumstances, a person with a vocation may sacrifice her own values for objectively higher ends, e.g. sensuous pleasure for truth, or power for compassion and generosity, but such higher ends do not direct her actions or her life as a whole. They have an objective validity for her, but they do not

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10   Cf. Bernard Williams' example of Gauguin (Williams 1981).

11   At the very latest stage of his ethical reflections, Husserl developed a philosophy of love (*Liebe*) to characterize a special type of relation between human persons that is crucial for communal life. For this reason, I do not think that one should use the term "love" to describe our relations to values. For Husserl's philosophy of love, see Melle 2007; Miettinen 2013: 382–412.

have any practical priority in her life (Hua 27: 28; cf. Frankfurt 2004: 12–14; Melle 2007).

We should not let Husserl's examples lead us astray here. Vocational life is not distinguished from professional life by its contents; the idea is not that arts and sciences are superior forms of activity to economic activities or sensuous pleasures. A person can dedicate her life to economic prosperity or to the cultivation of sensuous pleasures. We know such persons, at least from literature, for example Thomas Buddenbrook and Don Juan. These characters exemplify the possibilities of devoting one's life to the cultivation of premises and properties or of pleasures in distinction from "higher ends" such as truth and beauty. Husserl also includes these life types in his category of vocational lives. His distinction is not material but formal or structural: vocational values are values with which we identify and which are thus able to order and organise our activities and govern our lives as wholes.[12] This is why Husserl calls vocational values "over-arching values": they arch over all other values, subjective and objective, and place them in a hierarchical order.[13]

Vocational lives still suffer from two related restrictions. First, even if vocational values govern life as a whole they only direct certain kinds of actions. Husserl writes:

> The life forms based on universal [all encompassing] self-regulation, as they have been described thus far (…) govern the whole life, but not yet so that they would regulate and determine each action [*Handlung*], give each action a normative form [*Gestalt*], a form that would have its origin in a general, rule-fixing will. (Hua 27: 29)

The idea here is that even though vocational values are over-arching in the sense that the concern our lives as wholes, they do not motivate or direct each and every act and action. They structure the whole by merely regulating certain specific types of action, the ones that are most significant to the person in question.

Second, vocational values and goals are not settled by subjecting all values and goals to a universal critique. In other words, they are not the result of a universal critical reflection on values and life-goals, but merely stem or arise from the inner layers of the person without any reflective intervention. In Husserl's

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12   This means that Husserl's theory of parts and wholes (Hua 19) is crucial, not just to his epistemology and formal ontology but also to his ethics.

13   Cf. Drummond 2006: 8–9.

words, vocational life lacks "a habitual intention of a critique of goals" (Hua 27: 30). Referring to the naiveté of vocational willing, he writes:

> But in general such a free will realizes itself still in a certain naiveté. What is still missing is a habitual intention to [perform] a critique of goals and methods, their attainability (…) and propriety as goals as well as their axiological validity and genuineness or authenticity [*Echtheit*] of their value (Hua 27: 30).

The universal critique of goals and methods has two related tasks in Husserl's account: on the one hand, it protects our activities from disappointments, and on the other hand, it also protects one's whole life from a general or global loss of value. Only through a universal and radical critique of goals and methods are we "secured" against the devastating realization "that the goods that we have attained are merely seeming, that all the effort that we have made for achieving them has been pointless and the joy in them has been senseless" (Hua27: 30; cf. Husserl [1923] 1997: 213–214).

2   Ethical Life and the Categorical Imperative

In the *Kaizo* essays, Husserl characterizes ethical life by explaining how it emerges from vocational life on the basis of its internal, essential motives. Thus, his explication is genetic in nature. He writes: "Let us try to develop genetically the ethical life form as an a priori essential form of [all] possible human lives, that is to develop it from the motivation that belongs to it essentially" (Hua 27: 29).[14]

Husserl argues that self-reflection and self-regulation, when they become habitual in professional and vocational life, motivate a specific type or form of concern for, or worry about (*Sorge*), the permanence of satisfaction and happiness. Habituated self-reflection and self-regulation bring about a specific kind of uncertainty (*Unsicherheit*): when a human being considers her life as an open-ended whole and sees it as open to drastic changes, she becomes concerned about the permanence of the satisfaction that her chosen professional and vocational values and posited goals are able to provide. She realises that

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14   For Husserl, an apriori investigation is an investigation which proceeds at the level of pure possibilities, and studies all actual forms of life and all experiences as pure possibilities. Thus it aims at capturing the essence which belongs to all these possibilities (cf. Hua 37: 225).

when her life continues, faculties and capacities may change and new realities may appear in the surrounding world which cannot be foreseen (cf. Hua 4: 254–255/266–267, 266–267/178–179, 272–273/284–285; Husserl [1923] 1997: 207–208). In other words, she becomes concerned about sound and enduring values (*standhaltende, haltbare*), that would be resistant to the changes of the environment and the world, and to changes in her own abilities and capacities, and that would thus allow permanent and pure satisfaction (Hua 27: 30–32).[15]

What is disclosed in such reflection is not just the endlessness of one's own possible actions but also the endlessness of altering circumstances and worldly happenings. It is not merely that we are unable to foresee and comprehend the ending of our lives, but also that in the imaginative variation of our own capacities and actions and the possible circumstances surrounding them, we come to realise that our present values, values that may be perfectly satisfying in present circumstances, may not stand or hold at all in new circumstances and situations (cf. Hua 4: 267–268/279–280; Husserl [1923] 1997: 207–208).

According to Husserl's definition, an ethical value is a value that covers the whole life of an individual, covers it as a whole, and moreover, covers each and every individual act and action. Thus there are two criteria for an ethical life, in distinction from a vocational life, which only satisfies the first criterion: (i) the directing value has to cover the whole life, but (ii) it also has to cover each individual act and action. In other words, only an ethical value covers each and every possible activity, each action and each act that belongs to an individual life, "each unit of [a person's] life (*jeden Puls seines Lebens*)," as Husserl characterizes them (Hua 27: 96).

Husserl states that ethical life, as a result of a universal critique, is not just relatively higher than vocational lives but is absolutely valuable (Hua 27: 29). It is justified by insightful founding (*Begründung*) (Hua 27: 30), it is self-justifying, and is thus able to guarantee lasting happiness and satisfaction. This is realised

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15   An illuminative example of such a drastic change in one's capacities is offered by Simone de Beauvoir in *Adieux: A Farewell to Sartre* (*La céremonie des adieux, suivi de entretiens avec Jean-Paul Sartre août-septembre 1974*, 1981). Beauvoir describes how Sartre's weakening eyesight and finally his blindness brought about a crisis in their common life. Having lost eyesight Sartre could no longer read his own writing, and this impaired his capacity of critical thinking, a capacity that had been determining for his personal life and for their common life: "He could no longer reread what he had written. This, I believe, was very important. I am incapable of judging a text that I have not read myself. Sartre was like me. Yet he had checked this piece of writing only by ear. (...) he said: 'The problem is that the factor of reflexive criticism, always there when you read a text of yourself, is never very sharply present when somebody else is reading it aloud'" (Beauvoir 1984: 120).

by eidetic reflection of one's own self and person as a system of individual capacities (Hua 37: 162–163, 245–247, 252–253; cf. Hua 4: 268/280). The goal is to determine "the best possible" on the basis of one's individual capacities and their variations, and to act and live according to this understanding. In his lectures on ethics from the 1920s, Husserl explains:

> What I must is determined by the "I can," and what I can differs from what any other can (…) My best is, more precisely, determined by my past and my present, and my future is not totally without preference. My whole life lies in front of me, and in front of me lies the surrounding world which extends itself around me. What I can accomplish there operates as the basis for my deliberation, and the best that I can accomplish there now and in the future is my obligation [*Gesolltes*], the obligation of an individual. (Hua 37: 252–253; cf. Hua 28: 142)

And the same holds for each individual; each individual person has his or her corresponding task:

> The idea of the human being, this idea of the true and genuine human being, is given in such a way that each human individual is given his *individual* idea of the true and genuine human being, and that each human individual can develop himself as a true human being only by searching for her idea in self-governing [*selbsttätiger*] action as a free self till she sees and grasps it, and then wills to shape herself from now on according to this sense of her true self and to create herself anew. Correlatively the will is decided to regulate her life, this individual unique life, in its endlessness in the sense of the absolute ought which applies to this and applies only to this. (Hua 37: 240)

It is important to realise that by universality Husserl does not mean any coverage that extends from one subject to other subjects. For him the primary ethical principle is not "Do as you wish would be done to you" (Christian) or "Act in the way that you can imagine becoming a universal law binding on everyone" (Kantian) but rather "Act in the way which, with clear insight, can be continued or repeated in an open-ended future". In other words, Husserl defines universal binding primarily not in relation to all human beings or all persons or all rational subjects, but in relation to all actions and capacities of one individual life, all its circumstances, and the special type of openness which characterizes such a life (Hua 27: 31, 45; Hua 37: 252). In a lecture course from the 1920s, he

reformulates the categorical imperative accordingly by stating: "Do from now on and without hesitation always the best, your best, grasp it in norm-cognition and will it in norm-conscious volition" (Hua 37: 253, my emphasis). Thus, the ethical task is to act in such a way that one's actions contribute, as well as possible, to the best (the most valuable) one recognises to be attainable in one's own life, given one's individual abilities and environment and their variations (Hua 27: 45; Hua 37: 251–253; cf. Melle 2004; Beyer 2007: Trincia 2007).

The task of ethical self-shaping may imply values that are defined by the concept of the other, for example, respect for the other or love or generosity, but it is important to realize that Husserl does not define ethical life or distinguish it from vocational life by the concepts of the other but by the concept of self-critique and permanent satisfaction and happiness and by the concepts of intentional act and life as an open endless continuum of such acts. Thus for Husserl, ethical life is not defined by the good of others, but by the permanence and continuation of satisfaction, and this distinguishes him from Kant's formulations and connects him to the Aristotelian and Stoic traditions.

Again a comparison to Harry Frankfurt's account of normativity is helpful. In *The Reasons of Love*, Frankfurt argues explicitly that moral normativity which regulates our relationship with others and to others is not the only type of normativity relevant to the crucial question, "How to live our lives?" Moreover, Frankfurt argues that moral normativity it is not the fundamental type of normativity in this respect.[16]

Frankfurt's arguments explicate the view that motivates Husserl's discussion of renewal but remains implicit in his text: the decision of how to live is neither reducible to nor based on the decision of how to live with others. "Morality can provide at most a severely limited and insufficient answer to the question of how a person should live" (Frankfurt 2004: 7). In addition to our concerns for others, Frankfurt points out, we may have concerns for different types of ideality. As examples he gives the idealities of aesthetic and religious lives. Husserl agrees (e.g. Hua 37: 238), but he also adds the epistemic and existential idealities of truth and being (e.g. Hua 4: 193/203).

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16   Cf. Husserl: "Man darf aber unter dem Titel Ethik nicht an die blosse Moral denken, welche das praktisch 'gute', 'vernünftige' Verhalten des Menschen in Beziehung auf seine Nebenmenschen unter Ideen Nächstenliebe regelt. Moralphilosophie is nur ein ganz unselbständiger Teil der Ethik, die notwendig gefasst werden muss als die Wissenschaft von dem gesamten handelnden Leben einer vernünftigen Subjektivität unter dem dieses gesamte Leben einheitlich regelnden Gesichtspunkte der Vernunft" (Hua 27: 21).

This does not mean that considerations of the happiness and wellbeing of others would be insignificant or external to Husserl's ethics.[17] On the contrary, he points out that the personalistic categorical imperative includes an obligation to do one's best as a member of a community—or different kinds of communities—and moreover to do the best for the community (Hua 27: 45–47; Husserl [1923] 1997: 206, 220–224). This is because a human being is a communal being and most of his activities, if not all, are communal activities. We are dependent on others as children, parents, lovers, companions, students, teachers, friends, co-operators, collaborators, etc. and we must do our best for their best.

Husserl's deep interest in the communal aspects of human lives does not, however, cancel or compromise the fact that his formulation for the categorical imperative is very different from Kant's (Kant [1785] 1998; Kant [1797] 1996). It concerns action in the context of a personal life, in the context of individual interests and capacities and a personal environment, and does not deliberate over individual actions or action types in abstraction from personal life.[18] So even if Husserl praises Kant for his discovery of the idea of an unconditional command (Hua 37: 232; cf. Peucker 2007: 312), he makes clear that his acknowledgement of this idea does not mean that he would accept Kant's formulations. In the forth *Kaizo* essay, he states explicitly: "the Kantian term does not mean that we accept the Kantian formulation or the Kantian grounding (*Gründung*), shortly put the Kantian theories; it only says that an individual human being does not live in an arbitrary manner [without goals] but lives a life that has value [*Wert*]" (Hua 27: 44).

So as a summary: Husserl's understanding of ethical life is bound to his concepts of self-reflection, self-critique and personal life. He argues that what fundamentally distinguishes humans from animals is the capacity of reflection, and in the case of ethics, the capacity to reflect on one's actions and goals as parts of one's life and the environing world (Hua 27: 30; Hua 37: 240, 251–253). Self-reflection discloses life as an open-ended continuum, as an open whole of personal and interpersonal possibilities, and ethical life is a self-critical and self-responsible attitude toward this disclosure (Hua 27: 31).

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17   See Sokolowski 1985; Hart 1992; Hart and Drummond 1996; Drummond 2002; Drummond 2005; Drummond 2006; Hart 2006; Hart 2009.

18   Husserl's ethics has interesting similarities with late Stoic thinking especially in this respect (cf. Melle 2007). For Stoic ethics, see Annas 1992; Annas 1993; Nussbaum 1994; Sorabji 2006. On the Brentanian starting points of Husserl's ethics, see Guber 2009.

3   The Ethical Renewal

We have seen that for Husserl, ethical life is life in the self-evident insight into the best possible. Moreover it covers all areas of activity, from practical acts which posit goals and means to axiological acts which posit values and also to theoretical acts which posit being.

The connections and combinations of different types of acts in a single ethical life can vary without loss of ethicality. For Husserl, ethics does not just concern our life as focused on practical relations between human beings as human beings under the ideas of love and respect (Hua 27: 21). It also concerns the possible forms of our theoretical life and our axiological life, the life of the scientist and the life of the artist, for example, or the life of the worker focused on products and on means of production. Thus a dedicated artist or art lover can live non-ethically but can also rise to ethical insight. Husserl writes: "The true artist, for example, as such is not yet a true human being in the highest sense. An authentic human being can, however, be a true artist, but *can* be such only *if* ethical self-regulation *demands* [*fordert*] this from him" (Hua 27: 29; cf. Hua 37: 238).

This means that a person who has dedicated his life to dance, for example, and has chosen dance as her vocation can be ethical or live in an ethical way if she submits all her values and goals—artistic as well as non-artistic—to a critical inquiry which asks about their foundations and legitimacy. In a similar way a person dedicated to medicine and to the curing of the sick, can live both in a non-ethical as well as in an ethical way. In the former case, the person establishes and re-establishes her values and goals by her inclination or habitual convictions or by traditional or social conventions; in the latter case she holds to the same values and goals but now on the basis of a critical universal investigation of the validity of these values and goals in all possible circumstances. Husserl explains:

> Besides the tendencies which proceed from other individual persons, there are demands which arise in the intentional form of indeterminate generality, the demands of morality, of custom, of tradition, of the spiritual milieu (…) i.e., demands of the social group, of the class etc. They can be followed quite passively, or one can also actively take a position with regard to them and make a free decision in favor of them. (Hua 4: 269/281–282)

Thus a moral life, i.e. a vocational life dedicated to the furthering of good, harmonious relations between humans as humans, can become ethical in the

sense that its highest values and goals can become evident, as well as its whole order of values and goals. But such a life can also lack all legitimising ethical insight and can be directed by mere habits and inclinations—original or acquired. What Husserl calls "renewal" is a special type of transformation or conversion in which a human being starts to question her values and goals, and through this self-questioning is motivated to seek insightful relations into her own character and her life as a whole. When this questioning and self-critique becomes a critical habit, the person has undergone a radical transformation. She is now able to relate to her life and her actions in a critical manner and through critical questioning can gain an insightful relation into herself, that is to say, she acquires self-responsibility (cf. Hua 4: 252–253/264–265).

The ethical conversion of renewal, as Husserl outlines it, should be compared to the theoretical conversion marked by the *epochê* and the transcendental reduction which open the possibility of living in an insightful theoretical attitude (Husserl [1911] 1965; Hua 6: 140/137). When the theoretical critique becomes a habit for a singular thinker, he does not abandon his earlier convictions or replace them with new ones, neither does he live in a skeptical or agnostic indifference, but rather he is able to take a new responsible attitude toward convictions and is able to ground them anew. When the activity of critical questioning is formed into a practice between thinkers and speakers, then a new philosophical science is established (Hua 6: 328–329ff.).[19]

In a similar way, ethical renewal does not mean that one abandons one's former goals and values but rather means that one starts to look for evident, insightful grounding for these goals and values and lives in openness to the possibility that if no such insight can be found, then the values have to be subordinated to higher ones. Thus the values and goals lose their absoluteness and are seen and investigated as members of the universe of possible values and goals.

The other is not crucial to this enterprise of self-questioning as an object or patient of my actions but more importantly as a challenging force. More precisely, the fundamental ethical question about the other is not whether I should treat him as an end in itself or respect him, and on what grounds, but rather whether his actions and the value positings that they manifest or indicate question the values that I myself have chosen.

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19   In *Ethics of Husserl's Phenomenology: Responsibility and Ethical life* (2010), Joaquim Siles i Borràs argues that Husserl's philosophical-epistemological project is grounded in and directed by an ethical spirit of reflective self-responsibility.

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